“Part 2”

Law Curriculum
“Arrest, Search and Seizure”
January 2016
Recruit Handout

BASIC RECRUIT TRAINING
CHICAGO POLICE DEPARTMENT

EDUCATION AND TRAINING DIVISION

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Arrest, Search and Seizure
16 Hours: Hourly Breakdown

Hour 1: **Fourth Amendment, Exclusionary Rule (Mapp v. Ohio), Probable Cause**

Hour 2: **"Do the Guilty Go Free?" film on the Exclusionary Rule**

Hour 3: **Discussion of "Do the Guilty Go Free?" and the Exclusionary Rule: the Larry Eyler case.**

Hour 4: **When has an Arrest Occurred? The Legal Definition. (Dunaway v. New York)**

Hour 5: **Exercise on the Legal Definition of Arrest and Application of the Exclusionary Rule.**

Hour 6: **Warrantless Entries of Dwellings and Arrests; Defining Exigent Circumstances. (Payton v. New York, Steagald v. U.S.)**

Hour 7: **Illinois Statutes on Arrests, including Arrests Warrants.**

Hour 8: **The Laws of "Stop and Frisk." (Terry v. Ohio)**

Hour 9: **Cases Related to Terry v. Ohio.**

Hour 10: **Exercise on Understanding "Stop and Frisk."**

Hour 11: **The "Expectation of Privacy" and the Search Warrant Requirement. (Katz v. U.S.)**

No Search Warrant Required: Plain View, Open Fields, Abandoned Property.

Hour 12: **Search Warrants, Cases and Illinois Statutes.**

Hour 13: **Exceptions to the Search Warrant Requirement: Search Incident to Arrest, Emergency Searches, Hot Pursuit.**

Hour 14: **Exceptions to the Search Warrant Requirement: Consent searches.**

Hour 15: **Exceptions to the Search Warrant Requirement: Warrantless Searches of Vehicles.**

Hour 16: **Review: Multiple Choice Practice Questions (separate handout)**

HOUR: 1 of 16

TOPIC: ARREST, SEARCH & SEIZURE

MANDATORY READING MATERIAL:

Handouts

STUDENT PERFORMANCE OBJECTIVES

Given a lecture and discussion, the trainee, when given a multiple choice exam, will demonstrate that he or she recognizes the elements of the following sections of state law:

1. Define the Exclusionary Rule and the rule's effect on the law enforcement function. **(STATE SPO 1 (CF1000))**

2. Define "Probable Cause." **(STATE SPO 2 (AD401))**

3. Identify elements giving rise to probable cause. **(STATE SPO 12 (AD401))**

INTRODUCTION TO FOURTH AMENDMENT RIGHTS
1 of 16 Hours of Instruction on Arrest, Search and Seizure

I. The Fourth Amendment: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

*Key phrases we will discuss:

protection against unreasonable searches and seizures

and

And warrants shall issue, but upon probable cause

II. The Exclusionary Rule

A. Definition **(SPO 1 (CF1000))** A judicially created rule established to protect the integrity of the Fourth Amendment of the U.S. constitution. The Fourth Amendment bars UNREASONABLE SEARCHES AND SEIZURES.

B. "The purpose of the Exclusionary rule is to deter wrongful police conduct." **U.S. v. Leon**, 468 U.S. 897 (1984).

C. The effect of the Exclusionary Rule is that evidence that is the result of a constitutional violation, such as an illegal search, is not admissible at trial.

D. Mapp v. Ohio, 367 U.S. 643 (1961), held that the Exclusionary Rule applies at federal or state trials. Illegally seized evidence is no longer admissible in state trials.

III. Probable Cause

A. Definition **(SPO 2 (AD401))**: a set of facts or apparent facts viewed by a police officer which would lead a person of reasonable caution **to believe** a crime has been or is being committed.

B. Probable Cause is information that is probable, not actual, and not mere suspicion. We must ask if the facts show that it is likely that a crime has been or is being committed. We do not have to be 100% certain, but we must have more than a hunch based on a feeling. Probable cause is established with objective facts pointing to the probability of criminal activity.

C. To determine whether or not probable cause exists, we look to the "totality of the circumstances." We ask, would a person of reasonable caution, placed in the same set of circumstances as the officer, come to the same conclusion.

D. Probable cause is the same as "**reasonable grounds to believe** that the person is committing or has committed an offense." 725 ILCS 5/107-2. Arrest by Peace Officer.

Fourth Amendment, Exclusionary Rule, and Probable Cause

Hour 1 of 16: Evaluation Questions

THE FOURTH AMENDMENT: This block of instruction begins with a discussion about what the Fourth Amendment says and the historical background of the amendment. Answer the following questions:

1. What does the Fourth Amendment say?

The right of the people to be secure in their persons, houses, papers, and effects, against _____, shall not be violated, and no Warrants shall issue, but upon _____, supported by Oath and affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

2. Why do we have the Fourth Amendment, i.e. why was it so important to the framers of the Constitution?

THE EXCLUSIONARY RULE: Next, in this hour we will discuss the Exclusionary Rule. Answer the following questions:

3. What is the Exclusionary Rule?

Definition **(STATE SPO 1)**: a judicially created rule designed to secure the guarantees of the _____ by excluding evidence obtained as a result of an unconstitutional search and seizure. Evidence seized in violation of one's Fourth Amendment rights is _____ against that person.

4. What is the name of the case which held that the Exclusionary Rule applies to the states?

5. Why did the courts create the Exclusionary Rule?

6. What is the Exclusionary Rule's effect on law enforcement?

PROBABLE CAUSE: The last part of this hour will introduce the concept of Probable Cause:

7. Where does the idea come from?

8. How do we define Probable Cause? **(STATE SPO 2)**

Probable Cause to Arrest: Reasonable grounds to believe that a _____ has been committed or attempted, and that a _____ committed or attempted to commit the violation.
Reasonable grounds to believe means that the conclusion is justified by substantial, trustworthy evidence. The facts or apparent facts viewed by the police officer would cause a person of reasonable caution to believe that a crime has been or is being committed.

Probable Cause to Search: Reasonable grounds to believe that the specific items to be searched for are connected with criminal activity, and that these items will be _____.

9. When do we need to establish Probable Cause (i.e., before doing what?)?

10. How do we build Probable Cause? What are some elements which give rise to probable cause? **(STATE SPO 12 (AD401))**

Categories of Sources of Probable Cause

1. Officer's own observations
2. Other police sources: other officers; information on radio; Daily Bulletin.
3. Informants: citizen and criminal informants.

1. Officers own observations.

EXAMPLES OF FACTORS

a. The flight of suspect when approached by officers;

b. Physical clues (footprints, for example);

c. Statements by the suspect;

d. Suspect's previous record (never enough alone to establish probable cause);

e. Suspect's presence in high crime area;

f. Suspect's suspicious conduct.

* The probative value of each piece of information must be considered and weighed!

2. Informants tips: still use totality of the circumstances test.

a. In **Illinois v. Gates**, 462 U.S. 213 (1983) the Supreme Court held that the informant's tip should be used as one part of the big picture.

b. Does whether the informant is a criminal or a citizen matter? Using the totality of the circumstances test we can take into account the identity of the informant as a factor in the test.

c. **A purely anonymous tip (unidentified caller) does not establish probable cause or a reason to detain someone against their will (Terry stop). The officer must use the tip as a starting point and do own investigation to establish probable cause.**

3. Other police officers

a. Sometimes an officer acts in response to statements made by other officers of other police sources. For example, a radio call, or information in the Daily Bulletin.

b. Arresting or searching based only on another officer's information is only valid if the maker of the original statement had probable cause to arrest or search.

c. Officers can put their knowledge together to build probable cause.

Building Probable Cause

1. Stimuli: something invokes the attention of the officer.

2. **Reasonable suspicion:** The officer **suspects** criminal activity. The stimuli mixes with the officer's experience, education and training to build a reasonable basis for the activity which will follow. The officer starts to investigate and corroborate the stimuli by adding facts. May engage in a non-consensual detention for questioning at this point (**Terry** stop).

3. The officer builds probable cause by a step-by-step ascent from reasonable suspicion by collecting specific and articulable facts. It is very important that the officer be able to point to and explain the facts.

4. **Probable cause:** The officer **believes** a crime has occurred. The probable cause plateau is reached when a reasonable person viewing all the facts would be excited to the **belief that an offense did in fact occur** and the person in question is in fact a criminal participant.

IMPORTANT HIGHLIGHTS ABOUT PROBABLE CAUSE

1. CITIZEN COMPLAINANT as probable cause

a. May be the only basis of probable cause in many cases. Cases where the officer has no personal knowledge about what has occurred (wasn't there, didn't hear or see what happened, observes nothing on the scene to decide one way or the other).

b. The problem: often an officer who responds to a call will get different accounts about what has occurred. How does an officer know who to believe?

c. The answer: the officer is not expected to know. Absent factors that will strongly contradict what the complainant is alleging has occurred, the probable cause is established by the alleged victim's willingness to sign the complaint.

d. Make sure the alleged victim is willing to sign complaints before making the arrest. The complaints may be signed at the station, but no custody should occur without this agreement.

2. Alleged offender is WANTED ON A WARRANT.

a. A reasonable belief that a person is wanted on a warrant establishes probable cause.

b. The officer need not have any personal knowledge of the case.

c. If a check on the identification reveals an outstanding warrant, an arrest should be made.

3. ON-VIEW

a. An officer who observes the acts which constitute criminal conduct may make an arrest.

b. No citizen complainant is needed if the officer has personal knowledge of the crime.

c. Sometimes with a domestic battery call, for example, at the scene the alleged victim is unwilling to sign complaints. The officer didn't see what happened before arriving, but the officer's observations (of injuries for example) cause the officer to believe that the crime has occurred. The officer may make the arrest and sign complaints based on observation, the total investigation, and the conclusion reached. What is it reasonable to believe has occurred? That is what the officer must decide.

4. ADMISSIONS AND CONFESSIONS

a. Sometimes a person admits to what, if true, would constitute a crime.

b. Absent obvious contradiction to the credibility of the statements, this alone may be the basis of probable cause.

THE OFFICER MUST RECOGNIZE THAT THE TEST FOR WHETHER OR NOT PROBABLE CAUSE EXISTS IS THE "TOTALITY OF THE CIRCUMSTANCES" TEST, WHICH MEANS THAT DECISIONS ARE MADE ON A CASE BY CASE BASIS. **THE OFFICER'S JOB IS TO LEARN TO BE ABLE TO ARTICULATE, IN REPORTS AND IN COURT, ALL THE FACTORS WHICH LEGITIMATELY LED HIM OR HER TO A CONCLUSION THAT POLICE ACTION WAS JUSTIFIED.**

THE OFFICER SHOULD FOCUS ON ONE BASIC POINT: THE LAWS OF SEARCH AND SEIZURE REQUIRE THAT POLICE OFFICERS **GIVE REASONS FOR THEIR ACTIONS**. IT IS AS SIMPLE AS THAT. ON PAPER AND IN COURT, BE PREPARED TO EXPLAIN WHY YOU DID WHAT YOU DID.

HOURS: 2 and 3 of 16

TOPIC: ARREST, SEARCH AND SEIZURE

MANDATORY READING MATERIAL:

1. United States Constitution - 4th Amendment

2. Movie: "Do the Guilty Go Free?"

STUDENT PERFORMANCE OBJECTIVES

1. Define the Exclusionary Rule and the rule's effect on the law enforcement function. **(STATE SPO 1 (CF1000))**

2. Using the example from the movie, explain how the Exclusionary Rule effects the job of law enforcement. **(CPD SPO SS 1)**

3. Recognize that "wanted for questioning" is not the equivalent of probable cause to arrest. **(CPD SPO SS 2)**

"Do the Guilty Go Free?"

Film for Hours 2 and 3 of 16 on Fourth Amendment Rights

1. Define the Exclusionary Rule and the rule's effect on the law enforcement function.

The Larry Eyler case:

2. Follow the steps of the officer's contact with Larry Eyler.

3. At which point did the officer do something unlawful?

4. What was the result of the error?

5. Do the guilty go free as a result of the application of the Exclusionary Rule?

6. Is "wanted for questioning" the equivalent of probable cause to arrest?

HOUR: 4 of 16

TOPIC: ARREST, SEARCH & SEIZURE

MANDATORY READING MATERIAL:

Statutes
Handouts

STUDENT PERFORMANCE OBJECTIVES

Given a lecture and discussion, the trainee, when given a multiple choice exam, will demonstrate that he or she recognizes the elements of the following sections of state law:

1. Describe "arrest." 725 ILCS 5/107-5(a). (CPD SPO SS 3)

2. Recognize the legal standard defining when an arrest has occurred. (CPD SPO SS 4)

3. Identify factors a court would consider in deciding whether or not a stop elevated to an arrest. (CPD SPO SS 5)

4. Recognize ultimately how a court decides whether or not an arrest had occurred. (CPD SPO SS 6)

5. Explain the holding of **Dunaway v. New York** and its significance to law enforcement. (CPD SPO SS 7)

6. Identify elements giving rise to probable cause. (STATE SPO 12 (AD401))

7. Recognize what generally happens to evidence seized after an illegal arrest. (CPD SPO SS 8).

FOURTH AMENDMENT RIGHTS
ARRESTS

Handout for Hour 4 of the 14 hour block of instruction on arrest, search and seizure.

1. Describe "arrest." Chapter 725 ILCS 5/107-5(a)
(CPD SPO SS 3)

2. What is the legal standard for defining when an arrest had occurred?
(CPD SPO SS 4)

3. What are some factors a court would consider in deciding whether or not a stop had elevated to an arrest? (CPD SPO SS 5)

(1) whether encounter consensual;
(2) basis for encounter (reasonable grounds to believe criminal offense occurred);
(3) duration of encounter;
(4) investigative methods used to confirm/dispel suspicions;
(5) officer tells the person they are the subject of an investigation;
(6) officer tells the person that they are not free to leave;
(7) officer blocks persons path;
(8) use/display of weapons or dogs;
(9) number of officers;
(10) location (public or private; in-home questioning looks less like an arrest);
(11) extent of restraint on individual (e.g handcuffing);
(12) transportation of person against their will (how far and why);
(13) choice to end encounter available to person

4. Ultimately how does a court decide whether or not an arrest had occurred? (CPD SPO SS 6)

5. Explain the holding of Dunaway v. New York and its significance to law enforcement. (CPD SPO SS 7)

6. Identify elements giving rise to probable cause. (STATE SPO 12 (AD 401).

Review from Hour 1: Circumstances that would amount to probable cause to arrest:

1.
2.
3.
4.

Other common factors:

1. Fingerprints which put the suspect at the scene of the crime.
2. Identification by the victim or a witness (by photograph, show-up, or line-up for example).
3. Identification by unusual characteristics (unusual tattoos, scars or moles, one-legged man).
4. Information from a reliable informer.
5. Flight from the crime zone or an attempt to hide.
6. Attempt to destroy evidence.
7. Photograph of the crime being committed (e.g. bank camera video).
8. Evasive or inconsistent behavior.
9. Suspect's refusal to identify him or herself, or refusal to explain circumstances as to his or her presence in the area, or refusal to be detained under circumstances where the state statute requires the subject to stay in the presence of the officer for questioning.
10. Hearsay information from the general public, another police officer, or an informer.
11. Knowledge of the suspect's past criminal record or reputation (these may not be used in a criminal trial, but they may be used to make probable cause).

7. Generally, what happens to evidence seized after an illegal arrest? (CPD SPO SS 8)

Fourth Amendment "Seizures" of Persons:

- A "seizure" occurs when the police cause a person to believe that they are "not free to leave."

- Not all "seizures" are "arrests."

Two types of seizures of persons:

Terry Stops

- Investigatory detention.

- Lawful with "Reasonable Suspicion" of criminal activity.

- Purpose of the detention is to investigate the suspected criminal activity.

- If the suspicions are dispelled, the person is released. If the suspicions are confirmed and create probable cause, the person may be arrested.

Arrests

- When a reasonable person would believe they are under arrest/in custody.

- Under the totality of the circumstances a reasonable person would believe that the detention is not temporary and they are going to be taken to the station and charged.

- An arrest is unlawful without "Probable Cause."

- Probable cause exists when the officer reasonably believes a particular offense has been committed or attempted.

- It is NOT LAWFUL to take a person into the station against their will, or detain a person at the station against their will, without probable cause. Do not take a person in or prevent them from leaving, without a reasonable belief that there are facts sufficient for a charge.

"You Be the Judge"

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1. Defendant was asked, by two uniformed police officers, to come to the station for questioning. The officer's suspected him of a crime they were investigating. Defendant indicated that he did not want to go to the station to be questioned. Because he was the main suspect, the officers informed him that they needed him to cooperate, and that the questions would not take long to answer. The two officers handcuffed Defendant "for his safety and theirs" and drove him to the station. At the station Defendant was read his Miranda warnings and ultimately confessed. Is the confession admissible at trial against Defendant? You be the judge.

2. On March 23, 1994, J.W. was 14 years old and in eighth grade at Bunche school in Chicago. He was called to the principal's office at about 1:45 p.m. where three police officers were waiting. One of the police officers asked him some questions about a murder (the boy allegedly committed acts which made him accountable for first-degree murder).

The officers took him to the police station. The boy testified that at the time he was scared and believed he had to go with them. He was never told during the ride that he did not have to go to the police station or that he was not under arrest. He was not told that he was under arrest until about 8 p.m. the same day.

The boy initially told police that he knew nothing about the murder, but after some questioning he admitted his involvement.

The police did not have probable cause at the time the boy was brought to the station.

Was the boy under arrest at the time he made the incriminating statement (would the minor have reasonably believed that he was suspect under arrest)? If so he was seized without probable cause and taken to the station unlawfully. Are his statements admissible? You be the judge.

HOUR: 5 of 16

TOPIC: ARREST, SEARCH & SEIZURE

MANDATORY READING MATERIAL:

Statutes
Handouts

STUDENT PERFORMANCE OBJECTIVES

Given a lecture and discussion, the trainee, when given a multiple choice exam, will demonstrate that he or she recognizes the elements of the following sections of state law:

1. Define "arrest." 725 ILCS 5/107-5(a). (CPD SPO SS 3)

2. Recognize the legal standard defining when an arrest has occurred. (CPD SPO SS 4)

3. Identify factors a court would consider in deciding whether or not a stop elevated to an arrest. (CPD SPO SS 5)

4. Recognize ultimately how a court decides whether or not an arrest had occurred. (CPD SPO SS 6)

5. Explain the holding of **Dunaway v. New York** and its significance to law enforcement. (CPD SPO SS 7)

6. Identify elements giving rise to probable cause. (STATE SPO 12 (AD401))

7. Recognize what generally happens to evidence seized after an illegal arrest. (CPD SPO SS 8)

Question 1. When has an arrest occurred? (CPD SPO SS 4)

Read the following article and answer the questions. Paragraphs have been numbered for the purpose of answering the questions.

"**Sloppy Police Work Undermines Drug Prosecution"**
Chicago Daily Law Bulletin
Criminal Law Column
January 2003

By Ronald D. Menaker
Ronald Menaker is a partner in the law firm of Arnstein and Lehr, where he concentrates in criminal defense.

1. Both the U.S. and Illinois constitutions protect against unreasonable searches and seizures. For Fourth Amendment purposes, a seizure is synonymous with an arrest, and an arrest effected without probable cause or a warrant typically violates an accused's constitutional rights.

2. In the landmark case of *Terry v. Ohio*, the U.S. Supreme Court drafted an exception to the general warrant and probable cause requirements. Under *Terry*, a police officer may briefly stop and detain an individual to make reasonable inquiries if the officer has reasonable suspicion that the individual in question has committed or is about to commit a crime. Whether a detention is considered a seizure requiring probable cause or an investigative stop under *Terry* can often be difficult to determine.

3. For example, a police officer may possess sufficient information to detain a suspect pursuant to *Terry*, but if the officer's conduct following the stop exceeds the limited scope permitted under *Terry*, a valid detention may be transformed into an illegal arrest.

4. That very problem was thoroughly discussed recently by the 1st District Appellate Court. In a very interesting opinion by Justice Margaret O'Mara Frossard, the appeals court held that while police had a sufficient basis to initially detain the defendants, their unreasonable conduct following the stop amounted to an unlawful seizure requiring the suppression of a large cache of drugs. *People v.*

Calderon, et.al. No. 1-01-3395 (Dec. 2000).

5. The defendants, Francisca Calderon, Jose Jimenez and Sergio Perez, were charged with possessing with the intent to distribute cannabis, cocaine and methamphetamine after police seizure the contraband in the house the defendant's shared on South Francisco Avenue in Chicago. Before their trial, the defendant's moved to quash their arrests and suppress all of the evidence, claiming their seizure and subsequent consent to search violated their Fourth Amendment rights.

6. Most of the evidence presented during the motion was not is dispute. According to Sergeant Joseph Salemme, on August 25, 2000, he received information from a reliable informant that a home at 6234 S. Francisco Ave. was being used as a "stash house" for large amounts of marijuana and cocaine. The informant also told Salemme that a significant amount of drug-related money was being kept in a Cicero apartment and that one drug outfit had ties to both addresses.

7. According to Salemme, his informant described three individuals involved in the drug ring.

Question 2: What initiated the investigation? See paragraph 6.

8. After receiving this information, Salemme ordered members of his drug task force to surveil both locations. Salemme and his partner went to the Cicero address. While watching the building, Salemme saw a Latina carry a shoe box from a second floor apartment to a laundry room in the basement. Believing the box contained drug money, the officers obtained permission from another tenant in the building to search the laundry room, which was in a common area. The officers recovered more than $129,000.

Question 3: What was the first step taken in response to this information and what was the result? See paragraph 8.

9. The next day, Salemme contacted Officer Jerry Masterson, a task force member involved in the surveillance of the house on Francisco Avenue. He told Masterson about the cash and the informant's descriptions of the three suspects. He instructed Masterson to stop anyone leaving the house who matched the descriptions. But no effort was ever made to obtain a search warrant.

Question 4: On the following day, what were officers instructed to do? See paragraph 9.

10. At approximately 1 p.m. on Aug. 26, Masterson observed the three described subjects leaving the house. He saw them get into a car and drive approximately two blocks before he conducted an investigative stop. Masterson testified that at least three officers were involved in the stop, and they all had their guns drawn when the ordered the defendants out of the car. All of the defendants, as well as their vehicle, were searched but to no avail. With the assistance of other units, the defendants were then transported back to the Francisco Avenue address.

11. After being notified of the stop, Salemme went to the house, arriving within the hour. Salemme testified that no entry was made into the house before his arrival. He told the court that before any officer went inside, two of the defendants, Calderon and Jiminez, signed a consent form. The search netted more than a ton of marijuana, 29 pounds of methamphetamine and more than 10 kilograms of cocaine.

Question 5: According to the officers, what did the officers do and how did they do it? Be specific. See paragraphs 10-11.

12. Sergio Perez testified that the officers who stopped his car ran up with guns drawn and ordered all the defendants to place their hands on the trunk lid. Following the search at the scene, each was handcuffed and driven back to the house on Francisco Avenue. Upon arrival, each was separately questioned by the officers. One of the officers removed a key attached to Perez's belt and entered the house through the back door.

13. According to Perez, between 10 and 12 officers conducted the search while the defendants sat handcuffed in the dining room. Perez said the officers never obtained a search warrant for the house and never had consent from anyone to conduct the search. He told the trial judge that both Calderon and Jimenez signed consent forms but only after the drugs were discovered and after they were coerced into doing so.

Question 6: According to the defendant Sergio Perez, what did the officers do an how did they do it? See paragraphs 12-13.

14. The trial judge granted the defendant's motion to quash arrest and suppress drugs. The court found that although the police had reasonable suspicion necessary to make an investigatory stop, their continued detention exceeded the scope of a lawful *Terry* stop and transformed the investigation into an arrest without probable cause. The court also found the purported consent to search attributed to two of the defendants as invalid as well.

Question 7: What did the trial court judge do? See paragraph 14.

Question 8: Why did the trial court judge do this? See paragraph 14.

15. Citing impairment of its case, the state immediately appealed. The state took the position that the officers' conduct in detaining the defendants was well within the limits of a *Terry* stop. The defendants were not arrested, the state argued, until the contraband was recovered as a result of a valid consent to search provided by two of the defendants.

16. In tackling the State's argument, the appeals court first had to determine at what point an arrest occurs. The answer to that question, the court observed, is when a reasonable person innocent of any crime would believe he was no longer free to leave the company of the officers.

17. The court noted that, historically speaking, nine factors are to be considered in making that determination:

*The time, place, length, mood and mode of the interrogation.
*The number of police officers present.
*Any indicia of formal arrest or restraint.
*The intention of the officers.
*The subjective belief of the defendant.
*Whether the defendant was told he could refuse to accompany the police.
*Whether he was transported to the station in a police car rather than arranging his own transportation.
*Whether he was placed in an interview room as opposed to a common area.
*Whether he was told he was free to leave.

Question 9: Identify the factors a court would consider in deciding whether a stop elevated to an arrest. See paragraph 17. (CPD SPO SS 5)

18. In making this determination, a trial court must consider the totality of the circumstances.

Question 10: Ultimately how does a court decide whether or not an arrest has occurred? See paragraph 18. (CPD SPO SS 6).

19. In this case, the 1st District concluded, what began as a lawful investigative stop predicated on reasonable suspicion evolved into an unlawful arrest. Critical to the court's analysis was the undisputed testimony that the officer approached the defendants with weapons drawn and ordered them to get "spread eagle" on the trunk of the car. All of the defendants, as well as their car, were searched and even though nothing illegal was found, they were handcuffed, placed in squad cars, and eventually driven back to the Francisco Avenue residence.

20. Moreover, the court noted, the State's contention that the defendants' detention was for a minimal amount of time was contradicted by the evidence. The officers acknowledge that the defendants were detained for at least one hour before the officers began their search of the premises. While no fixed number of minutes is required to transform an investigative stop into an improper detention, the duration of defendants' detention in this case was neither reasonable nor justified. Not only were the defendants detained, searched, handcuffed and kept in the officers' custody, they were constantly questioned without *Miranda* rights and then had to wait for Salemme to arrive some 40 minutes later. Additionally, the defendants were never given the option of refusing to accompany the officers to the Francisco Avenue residence and were never told they were free to leave if they so chose.

21. Accordingly, based on the totality of the circumstances, the appeals court found the scope of the defendants' detention was well beyond what was necessary, reasonable or justified.

Question 11: Read the appeals court's analysis. See paragraphs 19-20. Did they agree with the trial court's decision? See paragraph 21.

22. As such, the court next had to decide whether the consent to search provided by two of the defendants was sufficiently attenuated from the illegal arrest or whether each was a direct exploitation of the impropriety. To resolve this question the court reviewed the four factor set forth in *Brown v. Illinois*, 422 U.S. 590, 45 L.Ed.2d 416, 95 S.Ct. 2254 (1975):

*The issuance of *Miranda* warnings.
*The temporal proximity of the arrest and consent.
*The presence of any intervening circumstances.
*The purpose and flagrancy of the official misconduct.

23. By applying the totality of these factors, the appeals court quickly concluded that the defendants' consent was tainted by the illegal arrest and that the drugs were properly suppressed.

Question 12: What did the appeals court decide about the consent to search the house and why? See paragraph 23.

24. By the officers' own admission, the court noted, no *Miranda* rights were provided before obtaining consent. There also was not intervening event between the illegal arrest and the consent to search. The conduct of police in stopping the defendants with their guns drawn, searching the defendants and their car, handcuffing them, transporting them to the stash house and questioning them demonstrated the quality and purposefulness identified in determining whether consent was obtained by exploitation of an illegal arrest.

25. Because the defendants were arrested without probable cause and the ensuing consent to search was a direct exploitation of that illegality, the trial judge's ruling on the defendants' motion to quash arrest and suppress evidence was affirmed.

Question 13: What happened to the evidence? See paragraph 23. (CPD SPO SS 8)

Reprinted from the Chicago Daily Law Bulletin, with permission from the author. Mr. Menaker made the request that the officers be informed that, now when they see him in court on their

motion to suppress, they can't complain he didn't contribute anything to their education on the issues!

Attorney Hyfantis
June 9, 2005

HOUR: 6 of 16

TOPIC: ARREST, SEARCH & SEIZURE

MANDATORY READING MATERIAL:

1. Illinois Compiled Statutes:
   Arrest Without a Warrant 725 ILCS 5/107-2

2. Handouts

STUDENT PERFORMANCE OBJECTIVES

Given a lecture and discussion, the trainee, when given a multiple choice exam, will demonstrate that he or she recognizes the elements of the following sections of state law:

1. Recognize circumstances when an arrest without a warrant is authorized (5/107-2). (SPO 13 (AD402))

2. Recognize where an arrest without a warrant is permissible (public place). (CPD SPO SS 9)

3. Explain the rule established by **Payton v. New York** using the Training Bulletin "Warrantless Non-consensual Arrest in Suspect's Home." (CPD SPO SS 10)

4. Describe some factors that would be used to establish "exigent circumstances." (CPD SPO SS11)

5. Recognize that an arrest warrant gives the authority to arrest in the dwelling of the arrestee. (CPD SPO SS 12)

6. Recognize that a search warrant is needed to search for the subject of an arrest warrant in a third party dwelling. **Steagald v. U.S.** (CPD SPO SS 13)

7. Recognize that there is no "crime scene exception" to the warrant requirement. (CPD SPO SS 14)

8. Recognize that if a felony arrest begins in a public place, an officer may pursue that person into any dwelling it is reasonable to believe the suspect has entered ("hot pursuit"). (CPD SPO SS 15)

Hour 6: Probable Cause alone does not justify a warrantless entry of a dwelling or a warrantless search of a dwelling.

Evaluation Questions

1. According to the statute, what describes the basis of an officer's legal authority to make a warrantless arrest?
(SPO 13 (AD402))

2. When probable cause exists, without a warrant, where does an officer have the legal authority to make a warrantless arrest?
(CPS SPO SS 9)

3. What did the court hold in the case of **Payton v. New York** ?
(CPD SPO SS 10)

4. What are some examples of factors which may create "exigent circumstances?"
(CPD SPO SS 11)

5. Where does an arrest warrant extend the authority to make an arrest? (CPD SPO SS 12)

6. What is needed to search a third party dwelling for the subject of an arrest warrant?
(CPD SPO SS 13)

7. Is there a "crime scene exemption" for warrantless searches?

(CPD SPO SS 14)

8. If a felony arrest begins in a public place, may an officer pursue that person into a private dwelling? (CPD SPO SS 15)

CHICAGO POLICE DEPARTMENT
TRAINING BULLETIN

VOLUME XXII. NUMBER 3
1 1 May 1981

WARRANTLESS NONCONSENSUAL ARRESTS IN SUSPECT'S HOME

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Superintendent

On April 15, 1980, the United States Supreme Court issued its landmark decision requiring police to obtain an arrest warrant prior to making an arrest in a suspect's home. The case is Payton v. New York, 100 S. Ct. 1371 (1980). This case is a consolidation of two lower appellate level cases entitled Payton v. New York and Riddick v. New York. **The Payton decision is based on the Fourth Amendment of the United States Constitution which provides that "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."** A summary of the facts of the Payton and Riddick cases is set forth as follows:

On 14 January 1970, after completing an intensive investigation, members of the New York City Police Department had established probable cause to believe that Theodore Payton had murdered the manager of a gas station. The following morning, six officers went to Payton's apartment for the purpose of arresting him. Although lights and music emanated from the apartment, there was no response to a series of knocks on the suspect's door. The officers then used crowbars to gain entry.

They found no one present, but in the course of a room-by-room search for Payton, one of the detectives discovered a .30 caliber shell casing. The casing was seized and later admitted into evidence at Payton's murder trial. The lower court held that the warrantless, forced entry into the defendant's home was justified by the exigent circumstances present in the case, and that the evidence, which was in plain view in the apartment, was properly seized. Payton's conviction was appealed to the United States Supreme Court on this precise issue.

In 1974, the New York City Police made another controversial arrest. They learned that Obie Riddick, who had been previously identified as the perpetrator of two armed robberies (which occurred in 1971) was living in a house in that city. No arrest warrant was obtained. On 14 March 1974, four officers knocked on Riddick's door. When it was opened by the suspect's young son, the officers were able to see Riddick sitting inside the dwelling. They rushed past the small boy and made the arrest. In the process, a quantity of narcotics was discovered and additional charges were later filed. At the suppression hearing, the trial judge held that the warrantless entry into the defendant's home was authorized and the search of the immediate area was reasonable under the doctrine of Chimel v. California. Riddick appealed the decision.

Payton's and Riddick's appeals reached the United States Supreme Court at approximately the same time and the Court examined the two together. In both cases, the police had entered the homes of the defendants armed with probable cause but without warrants to support the forcible entry. In reversing the two convictions the Court set forth the following rule of law:

THE 4TH AMENDMENT TO THE UNITED STATES CONSTITUTION, MADE APPLICABLE TO THE STATES BY THE 14TH AMENDMENT, PROHIBITS THE POLICE FROM MAKING A WARRANTLESS AND NONCONSENSUAL ENTRY INTO A SUSPECT'S HOME TO MAKE A ROUTINE FELONY ARREST. [Emphasis Added]

The Supreme Court then went on to state that although it is arguable that the warrantless entry to effect Payton's arrest might have been justified by exigent circumstances, none of the New York Courts relied on any such justification. As a result, the Supreme Court did not discuss,

for the purpose of delineation or definition, the concept of exigent circumstances that would justify a warrantless entry into a home for the purpose of arrest.

The purpose of this Training Bulletin is to analyze and summarize state and federal court decisions subsequent to Payton, that have addressed the issue of exigent circumstances.

The parameters set forth by these court decisions are to be considered as guidelines when a warrantless NONCONSENSUAL arrest in a private dwelling may become necessary. Each individual case will be determined by facts and the presence and/or absence of circumstances which require emergency actions. In studying the cases presented in this Training Bulletin, the officer should note that in all cases there are certain basic elements that the judiciary analyzes to meet the exigent circumstances principle. They are as follows:

1. A felony must be involved.
2. The officer must have a reasonable and clear showing of probable cause that the suspect committed the felony involved.
3. A reasonable belief that the suspect is armed or may cause injury to himself or others.
4. The likelihood that the suspect will escape if not swiftly apprehended.
5. The strong belief that the suspect is in the premise to be entered.
6. A compelling need for official action and no time to secure a warrant.

Additional factors which have been taken into consideration by the courts are:

1. The availability of judicial personnel for the Warrant process.
2. The time and method of entry, i.e. daylight or night peaceful or forcible.
3. The time differential between the officers' knowledge of the crime and the action of the entry into the premises.
4. **The presence of narcotics by itself does not qualify as an exigent circumstance. When narcotics are involved the warrantless entry must be made with the particular knowledge and reasonable belief of the officer that the evidence will be destroyed.**

U.S. v. Adams, 1st Cir.U.S.C.A., 28 May 1980

On October 17, 1978, five F.B.I. agents and two uniformed policemen entered the apartment of defendant Carol Adams in search of an escaped convict, Marlene Martino, who was found hiding in a closet. No search or arrest warrant had been obtained. Adams was subsequently indicted for harboring a fugitive in violation of federal law. The district court suppressed the evidence of the seizure of the escaped felon at Adams' apartment on the grounds that there were no exigent circumstances justifying the warrantless entry; the government appealed. The

basic facts arc these:

In early October of 1978, the administrator of tile Federal Correctional Institution in Aidemon, West Virginia, telephoned Special Agent Gallagher of tile Boston FBI office to report that Marlene Marino had recently escaped. Marino had been incarcerated for life in 1975 after having been convicted of the contract murder a soldier. The prison administrator also informed Gallagher that Marino and Adams had been confined together at Alderson and were well-acquainted. During the same period of time, Gallagher checked with the Revere Police during the next two weeks, but learned nothing more of Marino's whereabouts. On the afternoon of October 16, 1978, Gallagher was called by a Mrs. Goldberg who informed him that a Mrs. Jamison, the housekeeper assigned to work at Adam's apartment reported that an escaped murderess was living there and had been there for some period of time. Mrs.Goldberg also told Gallagher that according to Mrs. Jamison, Marino had hidden in the basement of' the building when a parole officer had come to call on Adams. Gallagher asked that Mrs. Goldberg have Mrs. Jamison determine the next day whether or not Marino was still at the Adams apartment. At 8:30 a.m. on October 17th, Gallagher received a phone call from Mrs. Goldberg with the message that Marino was still in the apartment. Gallagher and four other FBI agents and two uniformed police officers from the Revere police force went to the Adams apartment. Gallagher made no attempt to procure either an arrest or search warrant prior to going to the apartment. The police and FBI agents arrived at Adams' apartment at 9:50 a.m., knocked on the back door and were met by the defendant, restraining an agitated doberman pinscher. They asked her to put the dog in another room, which she did. Believing the defendant to be Marino, the agents immediately handcuffed her. They released her when a neighbor identified her as Adams. Adams denied Marino was in the apartment but after a short search Marino was found in a bedroom closet. At a suppression hearing before a magistrate, Agents Gallagher and Ross testified on the issues of probable cause and exigent circumstances. The magistrate found both probable cause and exigent circumstances and also that Adams had consented to the Search. He therefore recommended denial of the motion to suppress. Tile defendant appealed and the district court granted the motion to suppress on August 28, 1979. The government then appealed to the U.S. Court of Appeals. In pleading its case, the government relied heavily on the seven factors discussed in Dorman v. United States, 435 F.2d 385, 391-393, for justifying the warrantless entry. The factors can be Summarized as follows: (1) That a grave offense is involved; (2) that the suspect is reasonably believed to be armed,
(3) that there is a clear showing of probable cause that the suspect committed the crime involved; (4) a strong reason to believe that suspect is on the premises; (5) a likelihood that the suspect will escape if not swiftly apprehended; (6) that the entry, though not consented, is made peacefully; and (7) whether the entry is in day light or at night. The court stated that while the Dorman analysis has value. it is not to be used as a pass or fail checklist for determining exigency. **THE ULTIMATE TEST IS WHETHER THERE IS SUCH A COMPELLING NECESSITY FOR IMMEDIATE ACTION AS WILL NOT BROOK THE DELAY OF OBTAINING A WARRANT** [Emphasis added]. The government's appeal was denied. WHY? The court, utilizing these criteria, denied the Government appeal.

ILLINOIS DECISIONS

PEOPLE v. SMITH PEOPLE v. OUELLETTE

Defendants in two separate narcotics cases filed motions to suppress evidence seized by police in executing, search

warrants. In these cases the Illinois Supreme Court held:

Where exigent circumstances exist, failure of police to knock and announce their authority and purpose in the executing of a search warrant for narcotics does not violate Fourth Amendment rights against unreasonable searches and seizures. The existence of narcotics in itself, however, does not qualify as an exigent circumstance justifying such an intrusion into a suspect's premises. What is needed, beyond the knowledge that narcotics are involved, is that the police have a particular reason to reasonably believe that evidence will be destroyed.

PEOPLE v. ABNEY

Police officers interviewed an aggravated battery victim in the hospital who informed them that the suspect known to the victim as William Abney, had beaten him with an iron bar and a .38 mm pistol. The victim also gave the officers Abney's address and stated that the offender had walked off in that direction after the beating. Two officers, without a warrant, went to the suspect's home, approximately 1 1/2 hours after the initial incident. The officers knocked on the defendant's door with their weapons drawn and announced their identity. The door swung open at this point and the officers entered the premises and observed a .9mm bullet in plain view on the couch and seized it.

The defendant later turned himself in to the police. The defendant was charged with aggravated battery. He filed a motion to suppress any testimony concerning the officers' viewing the bullet. The bullet in this case is significant for two reasons. First, it matched the caliber of pistol allegedly used in the beating. Second, the victim later testified that Abney had threatened him shortly before the beating by stating, Athat the bullet had the victim's name on it. This threat allegedly was made in the defendant's home, and the victim testified that Abney threw the bullet on the couch after making the threat. The key issue facing the court in this case was: were exigent circumstances present? **In reviewing the case, the court held that the officers who entered the defendant's home were presented an unusual opportunity to quickly apprehend an armed suspect and thereby prevent his escape, avoid exhaustion of law enforcement resources, and helps insure against further endangerment to the community. The officers' decision to proceed to the defendant's residence without a warrant immediately followed receipt of the victim's statement, only 1 and 1/2 hours after the incident. The receipt of such information about a relatively recent offense could suggest to the officers a need for prompt action. In addition and closely related to the fact that the officers acted promptly, there was no deliberate or unjustified delay by the officers during which time a warrant could be obtained. Finally the need for prompt action was further made apparent by the belief that the suspect was armed and exhibited some sign of a violent character.**

In addition, to the exigent circumstances set forth above, other factors were present to suggest that the officers acted reasonably. The officers were acting on a clear showing of probable cause based on the type of reasonably trustworthy information necessary to justify warrantless law enforcement activity. The victim's statement created strong reason to believe that the defendant was in the premises entered. Finally, the entry here was peaceful. The

door was unlatched and the record shows that as a result of a previous burglary, the latch was inoperative.

In summary, the Illinois Supreme Court reversed the lower court in this case and recognized that a warrantless entry by criminal law enforcement officials may be legal when there is a **"COMPELLING NEED FOR OFFICIAL ACTION AND NO TIME TO SECURE A WARRANT."** The guiding principal is reasonableness under constitutional provisions governing searches and seizures. However lest officials be given free rein, it should be remembered that warrantless police action "must be" strictly circumscribed by the exigencies which justify its initiation.

PEOPLE v. WILSON

A security guard at a motel received complaints of a man loitering suspiciously in front of room 230. In addition the guard had also received complaints from guests that they were being solicited to purchase drugs by someone residing in room 230. The security guard instructed the loiterer to wait in the lobby and at the same time observed through the window that a lamp which was supposed to be bolted to the table in room 230 was missing. The guard called police, who accompanied him to room 230 to question the occupants about the missing lamp, but got no response. Upon leaving the police instructed the guard to call back when the occupants of the room returned. Approximately a half hour later the guard, accompanied by a maintenance man, entered room 230 using a pass key. The lamp was missing from the room and they also observed a butcher knife, bloody cotton rags in the waste can and toilet, a bloody washcloth on the sink, and a hypodermic syringe. The guard contacted police when the two occupants returned to the room and several officers responded. At this time the guard told police that the lamp was missing and about the various articles he had observed in the room. Upon approaching room officers stayed out of sight and the guard approached the door, approached the door, knocked and informed the subject inside that he wanted to talk about the missing lamp. The suspect took off the chain guard and began to open the door when one of the officers stepped in front of the door precipitating the following chain of events. The subject at the door yelled, Ait's the police, and attempted to close the door. The officer observed the defendant Wilson jump across the bed and head in the direction of the washroom. The officer pushed the room door open and pursued Wilson into the bathroom where a plastic bag containing five silver foil packets was retrieved from the toilet. Both subjects were arrested and the missing lamp was recovered from the vehicle they had used to return to the motel.

The state argued in trial court that when the officers arrived after the second call from the guard and were informed by him that the lamp was missing and he would sign complaints, they had probable cause to arrest the occupants for theft. The state based its argument on the premise that the Criminal Code (111. Rev. Stat. 1977. Chap. 38. Par. 107-2 (c) and the constitution allow warrantless arrests based on probable cause. The State further argued that this probable cause to arrest for theft gave the police the right to investigate further and that they had the right to be positioned in the aisle way outside the room. From this vantage point and coupled with the information from the guard about the other items he had observed in the room the defendant's crime was being committed and that the destruction of the evidence was imminent. The defendant argued on appeal that: 1. the officers had more than sufficient information upon which to obtain a warrant with regard to the theft of the lamp, and 2. the purpose of proceeding to the room to investigate further investigate was merely a pretext used to induce the exigent circumstances which did, in fact, occur with regard to the drug related activities. Upon reviewing the

sequence of events in this case, the court determined that before proceeding to the defendant's room, the officers had sufficient probable cause to obtain an arrest warrant for theft and that no exigent circumstances existed which justified the defendant's warrantless arrest except those improperly created by the officers themselves. Citing other court decisions, the court outlined several factors to be utilized in determining whether exigent circumstances are present so as to justify warrantless entry.

The factors are:

1. The gravity of the offense involved, especially if violent in nature.
2. The reasonable belief that the suspect is armed.
3. The clear showing of probable cause including reasonably trustworthy information to believe the suspects committed the crime involved.
4. The strong belief that the suspect is in the premises being entered.
5. The likelihood the suspect will escape if not swiftly apprehended.
6. The forcible or peaceful nature of the entry.
7. The time of the entry, i.e. during the day or night.

PEOPLE v. FAINE (September 16, 1980)

On July 14, 1978, police were sent to investigate a shooting at defendant's home. They found the defendant's wife lying on the floor and the defendant kneeling over her, holding her head. One of the policemen, Officer Hanson, took the defendant into the kitchen while another officer stayed with the victim. The defendant told Officer Hanson that he and his wife had just returned home and when they entered the house they heard a shot. His wife fell on the porch and he dragged her inside. Officer Hanson asked the defendant if there were any weapons in the house. Defendant said that he did have a weapon and led Officer Hanson into the southeast bedroom where he lifted up a mattress to display a weapon without a clip. The defendant stated that it was the only weapon in the house. After an ambulance transported the defendant's wife to the hospital, Officer Hanson advised the defendant of the Miranda rights and then he transported him to the public safety building.

During this time, various other police officers arrived and Officer Hanson remained to preserve the scene. Officer Erickson, whose duty is primarily crime scene investigation, arrived and made a cursory inspection of the first floor of the house (which included opening drawers) and then began taking photographs. During the course of his inspection, Officer Erickson found a pair of sunglasses on the front porch. Officer Hanson assisted in the search for evidence and found a .357 magnum handgun behind the kitchen stove. The gun was partially wrapped in a light blue cloth *and* was loaded. Officer Hanson was "not particularly" looking for other injured people, as he had no information about other injuries.

The officers did not have a search warrant. Officer Hanson testified that he did not ask the defendant if he

could search the premises, but the defendant did not tell him he could not search the premises, nor did the defendant object to his looking around the premises. The motion to suppress was denied and the defendant was found guilty by the jury. In his appeal to the Illinois Appellate Court, the defendant contended that the trial court erred in denying his motion to suppress physical evidence. The defendant asserted that the warrantless search of his house conducted by police within two hours of his wife's shooting, was illegal and without his consent. The state contended that the search was justified by exigent circumstances and the defendant's implied consent.

In presenting his appeal, the defendant leaned heavily on a previous United States Supreme Court decision, Mincey vs. Arizona (1978). In Mincey, an undercover police officer was shot and killed during a narcotics raid on Mincey's apartment. Homicide Detectives subsequently arrived on the scene and conducted an exhaustive four day, warrantless search of the apartment which included opening drawers and ripping up carpet, which resulted in the seizure of 200 to 300 items. The United States Supreme Court held that there was no "murder scene exception" to the general requirement that searches be made pursuant to a warrant absent exigent circumstances. The Court in the Mincey Case noted that there was no indication that evidence would be destroyed during the time needed to get a warrant. Or that a search warrant could not be easily obtained. However the court **RECOGNIZED THAT THE FOURTH AMENDMENT DOES NOT BAR WARRANTLESS ENTRIES AND SEARCHES WHEN IT IS THOUGHT THAT A PERSON MIGHT BE IN NEED OF IMMEDIATE AID OR WHEN THERE IS A POSSIBILITY THAT A KILLER OR OTHER VICTIMS ARE STILL ON THE PREMISES.** In this case, the Illinois Appellate Court determined that while the time factor is different, four days versus two hours, that the searches were of a similar nature. In this case, there was no indication that the officers were looking for other victims or the killer, the defendant had been taken to the public safety building, and the police had secured the house so that there was no danger that evidence would be lost, destroyed or concealed. Further there was no indication that a warrant could not have been easily obtained. Drawers in the kitchen and possibly other rooms were opened. The court goes on to state that while the gun behind the stove was visible in photographic evidence exhibits to a person standing next to the stove, the record does not indicate that Officer Hanson observed it at the time he initially took the defendant into the kitchen. It does show that the police expressly began a search of the premises to find evidence and that the gun was found during this search about an hour and fifteen minutes after police first arrived at the scene. At this time, it could not be said that the gun was in "plain view" since a fundamental part of that doctrine requires that the officer seizing the object must have a right to be in that position. The court reached the conclusion that since the police conducted a warrantless search without the presence of exigent circumstances they had no right to be in the position they were in when the gun was seized. The court granted a new trial and the handgun was excluded as evidence.

As this case illustrates, the police officer must be extremely cautious with the method by which evidence is obtained. **Once the suspect is in custody. the premise is secured, and there exists no reason to believe that there are any other injured persons at the location, the search must be curtailed until a search warrant is obtained. Any evidence that is in plain view should be noted as to type and location. The extra time needed to secure a complete search arrant will be rewarded in court when the evidence is allowed. Training, patience. and a thorough understanding of the law are the best tools a police officer hits to insure that his arrests lead to convictions.** [Emphasis Added.]

THE ABOVE TEXT WAS RETYPED FROM PREVIOUS EDITIONS OF THE ABOVE REFERENCED TRAINING BULLETIN. VARIOUS TEXT WAS HIGHLIGHTED TO FOR THE READER'S BENEFIT.

***Legal Bulletin "Warrantless Entry - Exigent Circumstances and Hot Pursuit" inserted in packet here.**

"You be the Judge"
Warrantless Arrests

1. Police had probable cause to believe that Smith had recently committed a burglary. Smith lived in a known address in the community. The police had no reason to believe that Smith would flee the jurisdiction. The police considered getting a warrant for Smith's arrest, but before they got a chance to do so, Officer Jones saw Smith on the street. Officer Jones arrested Smith for the burglary. At the time no warrant existed for the arrest of Smith. Was the conduct of Officer Jones lawful? You be the judge.

2. Same basic fact pattern as above, but assume that the police decided that, without getting a warrant, they would go to Smith's house to arrest him. They knocked on his door, but got no answer. The officers broke down the door and arrested Smith in his bedroom. During a search of Smith and his room, they found incriminating evidence of his participation in the burglary. Is the evidence admissible at trial against Smith? You be the judge.

HOUR: 7 of 16

TOPIC: ARREST, SEARCH & SEIZURE

MANDATORY READING MATERIAL:

1. Illinois Compiled Statutes:

Arrests in general

Arrest Without a Warrant	725 ILCS 5/107-2
Arrest by Private Citizen	725 ILCS 5/107-3
Rights on Arrest	725 ILCS 5/103-1
Method of Arrest	725 ILCS 5/107-5
Release by Officer	725 ILCS 5/107-6
Apprehension of Offender	725 ILCS 5/107-16
Person Arrested	725 ILCS 5/109-1

Arrest Warrants

Definitions	725 ILCS 5/107-1
Issuance of Arrest Warrant Upon Complaint	725 ILCS 5/107-9

Notice to Appear

Definitions	725 ILCS 5/107-1
Notice to Appear	725 ILCS 5/107-12

2. Handouts

STUDENT PERFORMANCE OBJECTIVES

1. Recognize Circumstances when arrest without a warrant is authorized. (725 ILCS 5/107-2) **(STATE SPO 13 (AD402))**

2. Recognize that an officer must ask an arrested person about any dependents under 18 who make be neglected as a result of the arrest. **(CPD SPO SS 16)**

3. Identify proper procedures for taking into custody person detained by a citizen. (725 ILCS 5/107-3) **(STATE SPO 14 (AD1203))**

4. Recognize the difference between the private person=s authority to make an arrest and the authority of a peace officer. **(SPO CPD SS 17)**

5. Recognize that a person arrested on a warrant has a right to be informed that a warrant has been issued and the nature of the offense. (725 ILCS 5/103-1) **(CPD SPO SS 18).**

6. Recognize that a person arrested without a warrant has a right to be informed of the nature of the offense. (725 ILCS 5/103-1) **(CPD SPO SS 19).**

7. Recognize how an arrest is made. (725 ILCS 5/107-5) **(CPD SPO SS 20)**

8. Recognize when an arrest may be made. (725 ILCS 5/107-5) **(CPD SPO SS 21)**

9. Recognize where an arrest may be made. (725 ILCS 5/107-5) **(CPD SPO SS 22)**

10. Describe how much force may be used in making an arrest. (725 ILCS 5/107-5) **(CPD SPO SS 23)**

11. Recognize circumstances where a peace officer may release an arrested person. (725 ILCS 5/107-6) **(STATE SPO 19 (AD 400))**

12. Identity the duty imposed on officers described by "Apprehension of Offender." (725 ILCS 5/107-16) **(CPD SPO SS 24)**

13. Identify proper procedures to follow upon arrest of a suspect. (725 ILCS 5/109-1) **(STATE SPO 18 (CF706))**

14. Define arrest warrant. (725 ILCS 5/107-1) **(STATE SPO 4 (CF702))**

15. Identify procedures for obtaining an arrest warrant. (725 ILCS 5/107-9) **(STATE SPO 15 (CP402))**

16. Identify requisites of an arrest warrant. (725 ILCS 5/107-9) **(STATE SPO 16 (CP801))**

17. Identify the role of the state's attorney or city attorney regarding arrest warrant authorization. **(STATE SPO 42 (CP400))**

18. Identify procedures for executing an arrest warrant. (725 ILCS 5/107-9) **(STATE SPO 17 (CF 705))**

19. Recognize the "knock and announce" requirement. **(CPD SPO SS 25)**

20. Define notice to appear. (725 ILCS 5/107-1) **(STATE SPO 6 (AD803))**

21. Recognize when issuance of a notice to appear is authorized in non-traffic cases. (725 ILCS 5/107-12) **(STATE SPO 9 (AD801))**

22. Identify proper procedures for issuance of notice to appear in non-traffic cases. (725 ILCS 5/107-12) **(STATE SPO 10 (AD804))**

23. Identify requisites of a notice to appear. (725 ILCS 5/107-12) **(STATE SPO 11 (AD803))**

Answer the following questions after reading the statutes assigned for the hour.

1. According to 725 ILCS 5/107-2(1)(c), when may a peace officer arrest a person without a warrant? **(STATE SPO 13 (AD 402))**

2. According to 725 ILCS 5/107-2(2), what should a peace officer inquire of the arrestee? **(CPD SPO SS 16)**

3. What is the difference between the private person's authority to make an arrest and the peace officer's authority to make an arrest? Compare 725 ILCS 5/107-3 and 5/107-2. **(CPD SPO SS 17)**

4. What is the procedure for taking into custody a person detained by a citizen? 725 ILCS 5/107-3 describes the citizen's arrest. **(STATE SPO 14 (AD1203))**

5. According to 725 ILCS 5/103-1(a), what should a peace officer be telling a person when arresting that person on a warrant? **(CPD SPO SS 18)**

6. According to 725 ILCS 5/103-1(b), what should a peace officer be telling a person when arresting that person without a warrant? **(CPD SPO SS 19)**

7. According to 725 ILCS 5/107-5(a), how is an arrest is made? **(CPD SPO SS 20**

8. According to 725 ILCS 5/107-5(b), when may an arrest be made? **(CPD SPO SS 21**)

9. According to 725 ILCS 5/107-5(c), where may an arrest be made? **(CPD SPO SS 22)**

Note: *But see 5/107-4(a-3) which restricts officers power to arrest when outside of their "home jurisdictions" (the area they were hired to protect). This will be discussed in the hour titled "Jurisdiction."*

10. According to 725 ILCS 5/107-5(d), how much force may be used in making an arrest? **(CPD SPO SS 23)**

11. According to 725 ILCS 5/107-6, may a peace officer lawfully release a person who has been arrested? **(STATE SPO 19 (AD400))** Does it matter whether the person was arrested on a warrant or not?

12. What is the duty of every officer as described in "Apprehension of Offender," 725 ILCS 5/107-16? **(CPD SPO SS 24)**

13. According to 5/109-1 to where and within how much time must a person arrested be taken? (725 ILCS 5/109-1)**(STATE SPO 18 (CF706)**

14. Define arrest warrant. 725 ILCS 5/107-1(a). **(STATE SPO 4 (CF702))**

15. What are the procedures for obtaining an arrest warrant (what documents does an officer need to prepare, and to whom are these documents presented)?
725 ILCS 5/107-9. **(STATE SPO 15 CP402))**

16. What are the requisites for an arrest warrant (i.e. what information would an officer seeking an arrest warrant need)? Does an officer need to know the exact name of the person who is the intended subject of the warrant? 725 ILCS 5/107-9(b). **(STATE SPO 16 (CP801))**

17. What is the role of the state's attorney regarding felony arrest warrant authorization? What about misdemeanor warrants? (from lecture)
(STATE SPO 42 (CP400))

18. What are the procedures for executing an arrest warrant? (725 ILCS 5/107-9)
(STATE SPO 17 (CF705)) The State SPO cites 5/107-9, but go back to 5/107-5, Method of Arrest (questions 7-10 this handout) for laws that apply for arrests with and without warrants.

19. When executing an arrest warrant, need a police officer knock and announce his or her presence

and purpose? (From lecture) **(CPD SPO SS 25)** (Relates to STATE SPO 17 "procedures for executing arrest warrants.")

20. Define "notice to appear." (725 ILCS 5/107-1) **(STATE SPO 6 (AD803))**

21. When is a notice to appear authorized in non-traffic cases? (725 ILCS 5/107-12) **(STATE SPO 9 (AD801))**

22. What are the procedures for issuance of a notice to appear in non-traffic cases? (725 ILCS 5/107-12) **(STATE SPO 10 (AD804))**

23. What are the requisites of the notice to appear (i.e. what information must it contain)? (725 ILCS 5/107-12) **(STATE SPO 11 (AD403))**

"You be the Judge"
Arrest with Warrant

1. The police obtained a validly issued warrant for the arrest of John on an armed robbery charge. Two officers went to John's house to execute the warrant. John did not answer the doorbell, or respond to the knocking and announcement of the officers' presence. A neighbor, who observed the police, told the officers that John was at a friend's house down the street and gave them the address. At the new residence, a woman answered the door, said that she knew John, but he was no longer in her house. She said she did not want the police in her house. Using the arrest warrant as authority, the officers entered the house without the woman's consent. When they were looking for John in the kitchen, the officers saw in plain view what they believed to be cocaine, and arrested the woman. At the trial of the woman for the illegal possession of the controlled substance, is the cocaine admissible? You be the judge.

Hour 8 of 16

TOPIC: ARREST, SEARCH & SEIZURE

MANDATORY READING MATERIAL:

1. Illinois Compiled Statutes:

Temporary Questioning Without Arrest	725 ILCS 5/107-14
Search During Temporary Questioning	725 ILCS 5/108-1.01

2. Handouts

STUDENT PERFORMANCE OBJECTIVES

Given a lecture and discussion, the trainee, when given a multiple choice exam, will demonstrate that he or she recognizes the elements of the following sections of state law:

1. Define "reasonable suspicion." **(STATE SPO 3 (SS201))**

2. Define "frisk." **(STATE SPO 5 (SS203))**

3. Recognize circumstances when "stop" is authorized. **(STATE SPO 20 (SS200))**

4. Recognize circumstances when "frisk" is authorized. **(STATE SPO 21 (SS200))**

5. Recognize circumstances when seizure is authorized under the "plain feel" doctrine. **(STATE SPO 22 (SS200))**

From **Terry v. Ohio**, 392 U.S. 1, 5-8 (1968):

...prosecution introduced in evidence two revolvers and a number of bullets seized from Terry and co-defendant, Richard Chilton, by Cleveland Police Detective Martin McFadden. At the hearing on the motion to suppress this evidence, Officer McFadden testified that while he was patrolling in plain clothes in downtown Cleveland at approximately 2:30 in the afternoon of October 31, 1963, his attention was attracted by two men, Chilton and Terry, standing on the corner of Huron Road and Euclid Avenue. He had never seen the two men before, and he was unable to say precisely what first drew his eye to them. However, he testified that he had been a policeman for 39 years and a detective for 35 and that he had been assigned to patrol this vicinity of downtown Cleveland for shoplifters and pickpockets for 30 years. He explained that he had developed routine habits of observation over the years and that he would "stand and watch people or walk and watch people at many intervals of the day." He added: "Now, in this case when I looked over they didn't look right to me at the time."

His interest aroused, Officer McFadden took up a post of observation in the entrance to a store 300 to 400 feet away from the two men. "I get more purpose to watch them when I see their movements," he testified. He saw one of the men leave the other one and walk southwest on Huron Road, past some stores. The man paused for a moment and looked in a store window, then walked on a short distance, turned around and walked back toward the corner, pausing once again to look in the same store window. He rejoined his companion at the corner, and the two conferred briefly. Then the second man went through the same series of motions, strolling down Huron Road, looking into the same window, walking on a short distance, turning back, peering in the store window again, and returning to confer with the first man at the corner. The two men repeated this ritual alternately between five and six times apiece--in all, roughly a dozen trips. At one point, while the two were standing together on the corner, a third man approached them and engaged them briefly in conversation. This man then left the two others and walked west on Euclid Avenue. Chilton and Terry resumed their measured pacing, peering, and conferring. After this had gone on for 10 to 12 minutes, the two men walked off together, heading west on Euclid Avenue, following the path taken earlier by the third man.

By this time Officer McFadden had become thoroughly suspicious. He testified that after observing their elaborately casual and oft-repeated reconnaissance of the store window on Huron Road, he suspected the two men of "casing a job, a stick-up," and that he considered it his duty as a police officer to investigate further. He added that he feared "they may have a gun." Thus, Officer McFadden followed Chilton and Terry and saw them stop in front of Zucker's store to talk to the same man who had conferred with them earlier on the street corner. Deciding that the situation was ripe for direct action, Officer McFadden approached the three

men, identified himself as a police officer and asked for their names. At this point his knowledge was confined to what he had observed. He was not acquainted with any of the three men by name or by sight, and he had received no information concerning when from any other source. When the men "mumbled something" in response to his inquiries, Officer McFadden grabbed petitioner Terry, spun him around so that they were facing the other two, with Terry between McFadden and the others, and patted down the outside of his clothing. In the left breast pocket of Terry's overcoat Officer McFadden felt a pistol. He reached inside the overcoat pocket but was unable to remove the gun. At this point, keeping Terry between himself and the others, the officer ordered all three men to enter Zucker's store. As they went in, he removed Terry's overcoat completely, removed a .38 caliber revolver from the pocket and ordered all three men to face the wall with their hands raised. Officer McFadden proceeded to pat down the outer clothing of Chilton and the third man, Katz. He discovered another revolver in the outer pocket of Chilton's overcoat, but no weapons were found on Katz. The officer testified that he only patted the men down to see whether they had weapons, and that he did not put his hands beneath the outer garments of either Terry or Chilton until he felt their guns. So far as it appears from the record, he never placed his hands beneath Katz' outer garments. Officer McFadden seized Chilton's gun, asked the proprietor of the store to call a police wagon, and took all three men to the station, where Chilton and Terry were formally charged with carrying concealed weapons...

THE LAW OF STOP AND FRISK
Fourth Amendment Rights

Terry v. Ohio, 392 U.S. 1 (1968) and **Minnesota v. Dickerson**, 113 S.Ct. 2130 (1993).

1. ***Define reasonable suspicion.*** **(STATE SPO 3 (SS201))** Reasonable suspicion is the amount of evidence which justifies an officer stopping a suspect to investigate crime. This type of seizure is known as a Terry stop. Reasonable suspicion is an inference from facts which lead an officer to be suspicious of criminal activity, but not enough facts to create probable cause, or the concluded belief, that a crime has occurred.

2. For example, in an area known for drug-related activity, an officer observes an individual engage in several hand-to-hand transactions. The officer cannot see what is being exchanged, and can only describe that the items are small. Based on training and experience, IF the officer is able to articulate why what is observed is consistent with the behavior of someone engaging in the illegal sale of drugs, the officer would have the reasonable suspicion necessary to justify a stop. *(There is no probable cause until we have facts supporting that a particular illegal item is possessed! At this point, illegal possession of WHAT? We don't know).*

3. ***Circumstances when a stop is authorized.*** **(STATE SPO 20 (SS200))** When a police officer has a **reasonable suspicion**, based on articulable facts, that an individual may be **engaged in unlawful conduct, or is about to commit a crime**, the officer has the right to **stop** that individual and inquire as to his or her identity, purpose, and otherwise investigate the suspicions.

4. Reasonable suspicion based on articulable facts requires that the officer be able to point to actual circumstances - **FACTS** - which make his or her suspicion reasonable. **Unsubstantiated hunches, or suspicion not backed up by facts, will justify neither the stop nor the frisk.**

5. ****Recognize circumstances when a frisk is authorized.*** **(STATE SPO 21 (SS200))** Incident to such a stop, **IF** the officer also has reasonable suspicion, based on articulable facts, which lead the officer to believe that the individual stopped **could be armed and may be dangerous** to the officer or to others, the officer may **frisk the outer clothing** of the person for purpose of determining whether the person is carrying a **weapon.**

6. "Our evaluation of the proper balance that has to be struck in this type of case leads us to conclude that there must be narrowly drawn authority to permit a reasonable search for weapons for the protection of the police officer, where he has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime. **The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in**

danger." Terry at 27 (1968). [bold added]

7. ***Define frisk.*** **(STATE SPO 5 (SS203))** A frisk is a limited search. The officer is not legally permitted to go immediately into the pockets of clothing. It is a pat-down of the outer garments where the officer is **searching for weapons only.** If the officer feels a hard object which could be a weapon, the officer is justified in going inside of the pockets to seize the object.

8. ***Recognize circumstances when seizure is authorized under the plain feel doctrine.*** **(STATE SPO 22 (SS200)** Also, if during the pat-down for weapons, the officer **"plainly feels" contraband**, the officer may go into the inner clothing of the individual to retrieve the object. This is like plain view with the hands. The fact that it is contraband **must be immediately apparent**, obvious to the touch.

9. **The judge is going to have to believe** that right away the officer knew what he or she felt was contraband, as opposed to an unknown item which possibly could have been contraband. A good example of such items would be rocks of crack, because this drug is unique in its physical characteristics. In the right context, it is possible to conclude immediately that the item is crack cocaine (for example, after stopping someone coming from a known crack house with facts to support a reasonable belief that a purchase of crack has just occurred).

10. The right to stop and the right to **frisk, does not permit a general search** for evidence of crime. If during the pat-down for weapons, the officer does not feel a hard object that could be a weapon, or what is obvious to the touch to be contraband, then the officer has no right to look through the pockets or inner clothing of the person stopped.

11. Even though the law now permits an officer to enter inner clothing for what plainly feels to be contraband, as well as for objects that could be weapons, **the justification required for conducting the frisk in the first place has not changed. The officer may only lawfully perform the frisk to feel for weapons, because the officer believes the person is armed and may be dangerous.**

12. If, after a proper stop and frisk, the officer discovers the person stopped possesses an illegal weapon, or contraband, the officer then has **probable cause to arrest**, and may, incident to the arrest, conduct a full search of the arrestee.

13. The two components - the stop and the frisk - are independent. Each requires its own justification. The frisk is not automatically lawful because a valid stop occurred.

14. The justifications for the stop and the frisk procedures need not be based on the personal knowledge of the officer. For example, information obtained from a known informant, where the

information was immediately verifiable and the informant would themselves be guilty of criminal penalties had he or she made a false report, may be sufficient when the information is that the defendant possessed a gun.

15. If a person refuses to answer questions about his or her identity or purpose, the officers probably do not have a right to further detain or arrest the individual, unless the officers have other justifications for such further detention. The Fifth Amendment prohibits compelling an individual to incriminate themselves.

Note: The 2010 offense of "Obstructing Identification," 720 ILCS 5/31-4.5, involves furnishing false information. A person commits the offense when he or she intentionally or knowingly furnishes a false or fictitious name, residence address, or date of birth to a peace officer who has: (1) lawfully arrested the person; (2) lawfully detained the person; or (3) requested the information from a person that the peace officer has good cause to believe is a witness to a criminal offense.

16. Illinois has statutory authority for the stop and frisk. See 725 LCS 5/107-14 and 108-1.01

Recognize circumstances when a stop is authorized. **(STATE SPO 20 (SS200))**

725 ILCS 5/107-14. Temporary Questioning without arrest.

(a) A peace officer, after having identified him or herself as a peace officer, may stop any person in a public place for a reasonable period of time when the officer reasonably infers from the circumstances that the person is committing, is about to commit, or has committed an offense...and may demand the name and address of the person and an explanation of his actions. Such detention and temporary questioning will be conducted in the vicinity of where the person was stopped.

(b) Upon completion of any stop under subsection (a) involving a frisk or search, and unless impractical, impossible, or under exigent circumstances, the officer shall provide the person with a stop receipt which provides the reason for the stop and contains the officer's name and badge number. This subsection (b) does not apply to searches or inspections for compliance with the Fish and Aquatic Life Code, the Wildlife Code, the Herptiles-Herps Act, or searches or inspections for routine security screenings at facilities or events. For the purposes of this subsection (b), "badge" means an officer's department issued identification number associated with his or her position as a police officer with that department.

*Provides for the right of the police to **stop** a person upon reasonable suspicion of crime.
*Permits questioning about the name and address of the person, and an explanation of actions.
*Questioning must occur at the place of the stop or in the vicinity.
*Detention may be for a reasonably short period of time only, unless it develops probable cause to arrest.
*Use only reasonable and necessary force to accomplish investigation.
*Failure to provide name, address, explanation, IS NOT PROBABLE CAUSE TO ARREST FOR ANY

OFFENSE IN ILLINOIS. It is not Aresisting or obstructing because that crime requires something physical. Lack of verbal cooperation may reasonably cause the detention to be longer, however.

Recognize circumstances when a frisk is authorized. **(STATE SPO 21 (SS200))**

725 ILCS 5/ 108-1.01. **Search During Temporary Questioning.** When a peace officer has stopped a person for temporary questioning pursuant to Section 107-14...and reasonably suspects that he or she or another is in danger of attack, he or she may search the person for weapons. If the officer discovers a weapon, he or she may take it until the completion of questioning, at which time he shall either return the weapon, if lawfully possessed, or arrest the person so questioned.

*This the statutory authority for the **frisk** by police. It requires independent and reasonable suspicion that the officer or another is in danger of attack.
*The search is FOR WEAPONS only.
*Seize objects that could be weapons, arrest if illegal weapons.
*Other contraband: the plain touch doctrine is from case law. The officer may also seize any items that plainly feel to be other contraband. **People v. Mitchell**, Illinois Supreme Court 1995.

Note: 725 ILCS 5/107-14 (b) became effective in January of 2016. Upon completion of any stop under subsection (a) involving a frisk or search, and unless impractical, impossible, or under exigent circumstances, the officer shall provide the person with a stop receipt which provides the reason for the stop and contains the officer's name and badge number. Chicago Police complete the Investigative Stop Report.

The Illinois Supreme Court and the "Scope" of the Terry Stop and Questioning:
What may you ask during a Terry stop?

Harris and Caballes:

People v. Harris, 886 N.E.2d 947 (2008), was reheard for the Illinois Supreme Court in light of the U.S. Supreme Court decision of **Illinois v. Caballes,** 543 U.S. 405 (2005).

Caballes was the "dog sniff case." It held that officers may use drug-sniffing dogs on motorists, **even if there is no reason to suspect that they are carrying narcotics.** The holding reversed the Illinois Supreme Court, which later issued a second opinion in line with the U.S. Supreme Court.

Harris 2008: The current standard of review for the reasonableness of **Terry** Stops involves an inquiry as to the **reasonableness of the duration of the stop**. **Harris** held that officers **may request identification from passengers during vehicle stops, as long as this does no unreasonably extend the detention**, and the inquiry is otherwise made in a reasonable way**. If compliance with the request is voluntary**, the passenger's rights have not been violated. The check on Raymond Harris revealed an outstanding warrant for this arrest, and cocaine on his person and in the vehicle.

Cosby and Oliver: Requesting Consent to search and vehicle stops.

In **People v. Cosby**, 898 N.E.2d 603 (2008), the defendant was lawfully stopped for a traffic violation. The officer returned the defendant's paperwork, and then asked for consent to search the vehicle. Permission to search was given, and the search led to the discovery of drug paraphernalia in the car. The defendant was convicted for possession of the paraphernalia.

The Court in **Cosby** held that **the stop ended when the officer returned the paperwork**. Since the defendant was no longer seized, and no second seizure occurred, the consent was valid and the evidence admissible. The court found that there was no basis to find that the request to search was part of the initial stop.

In **People v. Oliver**, 925 N.E. 2d 1107 (2010), similarly, after a lawful traffic stop occurred, the officer requested consent to search the vehicle. **In this case, since the request for consent was made after the defendant was told he was not going to be arrested, and was free to leave, the Court also concluded that it was not part of the initial stop.** No second seizure was determined to have occurred in this case either. The search, which lead to the discovery of cocaine in the trunk, was determined to have been based on valid consent.

***Note: "Consent to Search" will be discussed at length within hour 14 of this block of instruction, and "Vehicle Stops and Searches" are discussed at length within Hour 15 of this block of instruction.**

Evaluation Questions

1. Like "probable cause" justifies an arrest, what is the amount of evidence which justifies a stop?

2. When is a "frisk" of a suspect lawful?

3. Describe the "scope of the frisk" (physically what is the officer doing and what is the officer searching for)?

4. According to Terry v. Ohio, what may the officer seize during a frisk?

5. According to Minnesota v. Dickerson, what else may an officer seize during a frisk?

CHICAGO POLICE DEPARTMENT
TRAINING BULLETIN

STOP AND FRISK

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Volume XXXV, Number 7
11 July 1994

The Fourth Amendment to the Constitution guarantees:

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly the place to be searched, and the persons to be seized.

This Amendment, on its face, does not forbid all government searches and seizures; only unreasonable ones. The Fourth Amendment governs the area of stop and frisk, a police procedure vitally important in law enforcement activity and the topic of this training bulletin.

In the landmark decision of Terry v. Ohio, 88 S.Ct. 1868 (1968), the Supreme Court carved out a narrow exception to the warrant requirement by addressing the circumstances in which a police officer may stop and question a suspect, without his consent, in the absence of probable cause for arrest. Thus, we have the Terry rule, more commonly referred to as stop and frisk, which requires a balance of two interests. On one side is the interest of society in prohibiting unreasonable governmental intrusions upon private citizens, and on the other, law enforcement's interest in not only prompt and efficient investigation of crimes, but the officer's assurance that the person with whom he is dealing is not armed.

THE TERRY RULE

In Terry, an experienced policeman, McFadden, observed the defendant and two others in what appeared to be the “casing” of a store. He approached the suspects, identified himself as a policeman, and asked them to identify themselves. When they mumbled something that he could not hear, he grabbed the defendant, patted down the outside of his clothing, felt a pistol in the defendant's pocket, and removed it. The defendant was convicted on charges of carrying a concealed weapon.

The defendant contended that McFadden had lacked probable cause for an arrest, the Astop@ had been an arrest, the “frisk” was a search under the Fourth Amendment without probable cause, and the gun should be suppressed.

In affirming the reasonableness of Officer McFadden's actions, the court summarized its conclusions with the following language:

> **“We merely hold today that where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquires, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or other's safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him. Such a search is a reasonable search under the Fourth Amendment, and any weapons seized may properly be introduced in evidence against the person from whom they were taken.”**

The Terry rule has three distinct components. They are the stop, the frisk, and the intrusion. Each part is separate and distinct and will be discussed as such.

THE STOP

In Illinois, a stop is authorized by Chapter 725 5/107-14, which provides:

"A peace officer, after having identified himself as a peace officer, may stop any person in a public place for a reason- able period of time when the officer reasonably infers from the circumstances that the person is committing, is about to commit or has committed an offense... and may demand the name and address of the person and an explanation of his actions. Such detention and temporary questioning will be conducted in the vicinity of where the person was stopped."

In Terry, the Court emphasized that the officer who conducts an **"investigative stop must be able to point to specific and articulable facts which taken together with rational inferences from those facts, reasonably warrant that intrusion."** These suspicions must be objectively reasonable.

The totality of the circumstances - the whole picture - will be taken into account in assessing the information necessary to authorize police to conduct an investigative stop. Personal observations of an officer will be interpreted in light of the officer's knowledge and experience. The officer's knowledge of unique patterns of criminal behavior become very important in the assessment of reasonable suspicion. The law does not recognize an officer's "instincts," "sixth sense," or "hunch." It does, however, recognize facts and the logical inferences which can be drawn from those facts by a trained police officer.

Although the confrontation that occurred in Terry, was held to be a reasonable Fourth Amendment seizure, it is not clear whether there is a stop when, for example, the officer calls out "stop" to a person some distance away, or asks to speak with him. In Terry, the Court emphasized that the effect of the decision was to allow a forcible stop without probable cause, where some lesser but substantial degree of suspicion was present. The justices noted that the issue with respect to the "stop" was not whether McFadden had the right to ask questions of the defendant; any person, whether or not a policeman, may do that, since the person being questioned can simply walk away. Instead, the

issue was whether McFadden had the right to forcibly detain the defendant for purposes of questioning him. Courts have consistently distinguished investigatory stops from arrests. An arrest is a wholly different kind of intrusion upon individual freedom from a stop. An arrest is the initial stage of a prosecution, whereas a stop constitutes a brief intrusion upon the person. In Terry, the Court held that a stop and frisk could be constitutionally permissible despite the lack of probable cause for either an arrest or full search, and the fact that a brief detainment was a seizure requiring some 4th Amendment protection. A "seizure," however, was not defined until the case of U.S. v. Mendenhall, 446 US. 544 (1980).

The Supreme Court has established the following test for determining whether an encounter constitutes a Fourth Amendment "seizure." "A person has been 'seized' within the meaning of the Fourth Amendment only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." U.S. v. Mendenhall, 446 U.S. 544 (1980).

The Court gave the following examples of instances that "might indicate a seizure, even where the reasonable person did not attempt to leave":

1) threatening presence of several officers
2) display of a weapon by officer
3) some physical touching of the person
4) the use of language or tone of voice compliance with the officer=s request might be compelled.

The nature of the detainment will be defined by the means by which it was affected. In conducting a stop, the officer's actions are restricted to those techniques consistent with the encounter. The police officer's techniques will be evaluated by looking to the degree of intrusion used when determining the reasonableness of their actions in each situation. These actions will be the basis for the determination of a reasonable "seizure" within the scope of the 4th Amendment.

The Supreme Court has declined to impose a rigid time limitation on Terry stops or to establish a per se rule that a 20 minute limitation is too long. This means that in determining whether the length of time between the initiation of the stop and the later release or arrest was reasonable the court will evaluate the facts of each particular case. It will examine whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly.

However, the results of the initial stop may arouse further suspicion and the stop may be prolonged, as was the case in State v. Stadvold, 456 N.W. 2d 295 (1990). The justification for the initial stop was a minor traffic violation, driving without lights that resulted in the discovery of the fact that the defendant was driving while intoxicated resulting in arrest. On the other hand, the results of the initial stop may dispel questions in the officer's mind and the individual must be free to go. For example, in People v. Bello, 119 Cal. Rptr. 838 (1975), the driver was stopped on suspicion of driving under the influence. Upon producing a license and obviously appearing not intoxicated, the court found the officer's subsequent action; the shining of a flashlight into the car, revealing the butt of a gun, to be improper. The court reasoned that "once the officer had seen and talked to the defendant he had no legitimate reason for pursuing any further investigation of him."

These cases illustrate the factors which can affect the reasonable duration of an investigative stop, particularly the focus on legitimate law enforcement objectives and the need for diligence in meeting those objectives.

A stop for investigation is brief when compared with an arrest. The use or show of force is greatly limited in a stop and frisk situation. Once officers have established reasonable suspicion, they must employ a minimal amount of force in effecting their subsequent seizure. The amount of force appropriate under the circumstances will depend upon the need for restraint, with the officer employing the least intrusive means. For example, in U.S. v. Hensley, 105 S.Ct. 675 (1985), the officer responded to a flyer that the driver of a car was wanted for investigation of robbery and that the suspect should be considered armed and dangerous. Approaching the car Awith his service revolver drawn and pointed in the air@ was held to be permissible due to the reports of his being armed and dangerous.

It may be concluded, when all the surrounding circumstances - including the nature of the criminal activity being investigated - suggests the need for police officers to assure their protection, the display of weapons will be within the permissible scope of an investigative stop.

When a police officer has a reasonable suspicion, based on articulable facts, that an individual may be engaged in unlawful conduct, or is about to commit a crime, he has the right to stop that individual and inquire as to his identity, purpose and otherwise investigate the suspicions. Officers are reminded, however, that pursuant to a valid stop, **if a person refuses to answer questions about his identity or purpose, the officers probably do not have a right to further detain or arrest the individual unless they have other justifications for such further detention.**

THE FRISK

The second component of the Terry, rule involves an inquiry separate from whether the initial stop and detention was permissible. This component questions whether there was sufficient cause for an officer to conduct a protective "frisk" of the person being detained.

In Illinois a frisk is authorized by Chapter 725 ILCS 5/108-1.01 which provides:

"When a peace officer has stopped a person for temporary questioning pursuant to Section 107-14 and reasonably suspects that he or another is in danger of attack he may search the person for

weapons. If the officer discovers a weapon, he may take the weapon until the completion of the questioning at which time he shall either return the weapon, if lawfully possessed, or arrest the person so questioned."

In Terry v. Ohio, 88 S.Ct. 1868 (1968), the Court focused on the authority of an officer to conduct a frisk, or pat-down, because it was the frisk of the suspects which led to the discovery the guns and gave the officers probable cause to arrest. The Court held: "... where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity is afoot and that the person with whom he is dealing may be armed and presently dangerous he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him." The authority of officers to conduct a frisk is generally challenged by defendants in criminal cases for the simple reason that the frisk uncovers weapons or other evidence of crime which they seek to suppress.

In Terry, the Court concluded that a "frisk" is indeed a "search" within the meaning of the Fourth Amendment, and emphasized that it is a very special type of search, unlike other searches of persons. A frisk is a measure to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm. It must be limited to that which is necessary for the discovery of weapons which might be used to harm the officer or others nearby.

Just as an investigative stop must be supported by facts which establish reasonable suspicion that criminal activity is afoot, a frisk must be supported by reasonable suspicion to believe that the individual who has been lawfully stopped is armed and dangerous. These facts may be based on either firsthand or secondhand knowledge or logical inferences from which an experienced officer is allowed to draw.

However, the justification for a stop is not necessarily justification for a frisk, and in each case, an officer must be prepared to point to the specific and articulable facts which justified that particular intrusion. For example, in Ybarra v. Illinois, 100 S.Ct. 338 (1979), police officers had a valid warrant

to search a bar and the bartender for heroin. While executing the warrant, the police performed a frisk of the defendant, one of the bar's patrons; the officer felt a "cigarette pack with objects in it which turned out to be tin foil packets of heroin. The Supreme Court held that the initial frisk was not justified under Terry because the police had no reasonable belief that defendant was armed or dangerous. The Court noted several factors were significant:

1) When the officers entered the tavern, there was sufficient lighting to observe those present;

2) The police did not recognize Ybarra as a person with a criminal history or as one who might be inclined to assault them;

3) Ybarra's hands were empty and he gave no indication of possessing a weapon; and

4) Ybarra was not acting in a threatening manner.

Undoubtedly, the Ybarra decision reflects the fact that Ybarra was in a public place along with other customers when he was subjected to the frisk. This does not preclude the possibility that police may be justified in frisking people located on the premises where a search warrant is executed. Such actions would be justified as long as the officers can point to specific factors which caused them to reasonably suspect the person frisked was armed.

SCOPE OF THE FRISK

The third component concerns the scope of the protective frisk. **The sole object of a frisk is to determine whether a weapon is present and to neutralize the threat of physical harm to the officer and others.** The frisk of a person, though lawful at its inception, may nevertheless offend the Fourth Amendment if the police action exceeds the boundaries necessary to accomplish its purpose. These boundaries are determined by two significant factors:

1) how extensive an area may be searched and
2) how intensive may the search be within that area.

In determining the extent of the search, it must be confined in scope to discover guns, knives, clubs or other hidden weapons, for the assault of an officer. If in conducting a pat down, the officer feels **a hard object which may be a weapon, (if the object felt is hard, then the question is whether its "size and density" is such that it might be a weapon) he may then be able to justify the second factor, the intrusion beneath the surface of the suspect's clothing.**

Because the sole object of a frisk is to locate weapons, the intrusion must be strictly limited to accomplish that and no more. A lawfully initiated frisk is unlikely to generate a challenge to the intensity of the frisk if a weapon was in fact located. The issue is more likely to arise when an officer conducts a frisk for weapons and discovers other items of contraband, as was the case in Minnesota v. Dickerson, 113 S. Ct. 2130 (1993).

In Dickerson the Supreme Court rejected the police search where the officer was conducting a frisk which did not reveal weapons, but his interest in a small lump in the suspect's pocket revealed crack cocaine. The officer testified:

"As I patted the front of his body, I felt a lump, a small lump, in the front pocket. I examined it with my fingers and it slid and it felt to be a lump of crack cocaine in cellophane." The officer then reached into the suspect's pocket and retrieved a small plastic bag containing one fifth of one gram of crack cocaine.

Justice White, writing for the majority said the officer violated Dickerson's 4th Amendment rights because he had to manipulate and squeeze the lump in order to determine that it was probably cocaine. The officer's continued exploration was unrelated to the original justification of the pat-down which was a frisk for weapons.

As a result of Dickerson, the Court did announce a "plain touch" or "plain feel" exception to the warrant requirement. It is analogous to the plain view doctrine, but subject to the limitations in Terry v. Ohio. If a police officer lawfully pats down a suspect's outer clothing and feels an object whose contour and mass makes its identity immediately apparent there has been no invasion of the suspect's privacy beyond that already authorized by the officer's frisk for weapons. If the officer who detects the presence of the object, upon immediately feeling it achieves probable cause to believe it is contraband, its warrantless seizure would be justified by the same considerations that exist in the " plain view" doctrine. If, however, the police officer oversteps the boundaries of a lawful stop and frisk by squeezing, sliding or otherwise manipulating the contents of the suspects pocket to determine its nature, when he already knows it is not a weapon, a 4th Amendment violation has occurred.

Once it has been determined that the suspect is not armed, the police may not without probable cause, once again search the suspect and confiscate the contents of his pockets under the guise of a Terry stop.

In summary, a police officer may stop a person in a public place for a reasonable period of time if the officer reasonably infers that the subject is committing, about to commit or has committed an offense. The level of proof needed to stop and frisk is reasonable suspicion which is based on articulable facts. When conducting a stop, a police officer may frisk a person for weapons when he reasonably suspects that person is armed and he or

another is in danger of attack, a frisk is a limited search or pat-down of the outer garments for weapons.

The Constitution does not require a police officer confronted with possible criminal activity to choose between the two alternatives of making an arrest (when probable cause may be absent) or walking away (allowing a crime to occur or a criminal to escape). The doctrine of "Stop and Frisk" provides an intermediate response, which in appropriate circumstances, constitutes good police work.

THE ABOVE TEXT WAS RETYPED FROM PREVIOUS EDITIONS OF THE ABOVE REFERENCED TRAINING BULLETIN, SOME SECTIONS WERE HIGHLIGHTED FOR EMPHASIS - REFER TO ORIGINAL TO CITE.

Hour 9 of 16

TOPIC: ARREST, SEARCH & SEIZURE

MANDATORY READING MATERIAL:

1. Illinois Compiled Statutes:

Temporary Questioning Without Arrest	725 ILCS 5/107-14
Search During Temporary Questioning	725 ILCS 5/108-1.01

2. Handouts

STUDENT PERFORMANCE OBJECTIVES

Given a lecture and discussion, the trainee, when given a multiple choice exam, will demonstrate that he or she recognizes the elements of the following sections of state law:

1. Define "reasonable suspicion." **(STATE SPO 3 (SS201))**

2. Define "frisk." **(STATE SPO 5 (SS203))**

3. Recognize circumstances when a "stop" is authorized. **(STATE SPO 20 (SS200))**

4. Recognize circumstances when a "frisk" is authorized. **(STATE SPO 21 (SS200))**

5. Recognize circumstances when seizure is authorized under the "plain feel" doctrine. **(STATE SPO 22 (SS200))**

SEARCH AND SEIZURE – Suspect's flight from the police may be used as a factor in determining whether the police had sufficient reasonable suspicion to stop that suspect.

Illinois v. Wardlow, U.S. Supreme Court, No. 98-1036, January 12, 2000.

Justice Rehnquist delivered the Opinion of the Court.

On September 9, 1995, two Chicago police officers, Officers Nolan and Harvey, were patrolling an area known for heavy narcotics trafficking. The officers were driving the last car of a four-car caravan. They were traveling together because they expected to find a crowd of people in the area, including lookouts and customers. As the caravan passed 4035 West Van Buren Street in Chicago, Officer Nolan saw William Wardlow, the defendant in this case, standing next to a building. He was holding an opaque bag. Suddenly the defendant looked in the direction of the officers and fled. Nolan and Harvey turned their car southbound, watched the defendant as he ran through a gangway and an alley, and eventually cornered him on the street. Officer Nolan exited his car and stopped the defendant. He immediately conducted a pat-down search for weapons because, in his experience, it was common for there to be weapons in the near vicinity of narcotics transactions. During the frisk, Nolan squeezed the bag the defendant was carrying and felt a heavy, hard object similar to the shape of a gun. The officer then opened the bag and discovered a .38 caliber handgun with five live rounds of ammunition. Wardlow was then immediately placed under arrest.

Subsequently, the defendant moved to suppress the evidence seized from his person by the police after they stopped him. The trial court denied the defendant's motion and ruled that the gun was seized after a lawful stop and frisk. The appellate court reversed the defendant's conviction and concluded that the gun should have been suppressed because the police did not have reasonable suspicion sufficient to justify an investigative stop pursuant to **Terry v. Ohio**, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). The Illinois Supreme Court affirmed the ruling of the Appellate Court and determined that sudden flight, even in a high crime area, does not create a reasonable suspicion sufficient to justify a **Terry** stop. Specifically, the Illinois Supreme Court determined that while the police may have the right to approach individuals and ask questions, those individuals have no obligation to respond. According to the Illinois Supreme Court, those persons may decline to answer and simply go on their way. This refusal to respond alone does not provide a legitimate basis for an

investigative stop. The Illinois Supreme Court concluded by noting that an individual's flight may simply be an exercise of his right to "go on one's way," and, thus, could no constitute reasonable suspicion justifying a **Terry** stop. From this order, the People brought this appeal before the United States Supreme Court.

The United States Supreme Court concluded that nervous, evasive behavior on the part of a potential suspect was a pertinent factor in determining reasonable suspicion. The court held that headlong flight, whenever it occurs, must be considered to be the consummate act of evasion. While this conduct may not necessarily be indicative of wrongdoing, it is certainly suggestive of such. Consequently, the Court ruled that in reviewing the propriety of an officer's conduct, trial courts do not have empirical studies dealing with inferences drawn from suspicious behavior, and the Court could not demand scientific certainty from judges or law enforcement officers where none exists. Therefore, the Supreme Court held that the determination of reasonable suspicion must be based on common sense judgments and inferences about human behavior. The Court concluded that, in this case, Officer Nolan was justified in suspecting that the defendant was involved in criminal activity and, therefore, in investigating further.

Justices O'Connor, Scalia, Kennedy and Thomas joined Justice Rehnquist in this Opinion.

Justice Stevens, joined by Justices Souter, Ginsburg and Breyer, concurred with that part of the majority's opinion which refused to create a "bright-line-rule" that flight is either always or never sufficient to justify a **Terry** stop. However, Justice Stevens dissented from the majority's opinion which held that the police, in this particular case, had reasonable suspicion to justify the detention of the defendant.

*Question: What is the significance of the Wardlow holding?

No Automatic Right to Pat-down frisk After Stop

Illinois Supreme Court Decision, ***People v. Flowers***, 688 N.E.2d 626 (1997).

Early in the morning of July 12, 1995, Danville police officers received an anonymous telephone call from someone who reported the sound of glass breaking at a vacant home. Two officers investigated the call but could not find any broken glass or signs of forced entry. About 15 minutes later, however, the officers saw Flowers riding a bicycle. Flowers matched the description provided by the caller.

When asked if he had been in area earlier, Flowers agreed that he had been. Flowers said that he had been at his girlfriend's house and was returning to his own home. Flowers provided his address and the address of his girlfriend. When the officers asked him what he had in a bag on the front of his bike, Flowers said it contained clothing. Flowers gave the officers permission to look inside the bag, and the bag did indeed contain clothes, just as he had claimed.

One of the officers then patted Flowers down and felt a "tube-like" item in his pocket which the officer believed to be a crack pipe. When asked about the object, Flowers confirmed it was a crack pipe. Additional frisking turned up a bag containing cocaine.

Testifying at the suppression hearing, the officer said that he did not have any particular reason to believe that Flowers was armed. The officer said he frisked Flowers because "I do that as a common thing in my job, to pat people down for my safety as well as theirs."

The Illinois Supreme Court condemned the officer's actions and decided this search was improper as a matter of both state and federal law. Under **725 ILCS 5/107-14**, a police officer may stop any person in a public place for a reasonable period of time if the officer believes the person is committing, has committed, or is about to commit a crime. The right to frisk, in turn, is separately granted by **725 ILCS 5/108-1.1**, which provides that the officer may search a person for weapons if, after performing a stop, he reasonably believes that he or another person is in danger of attack.

Under ***Terry v. Ohio***, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), the officer

who wishes to conduct a frisk may also have some reason to believe the suspect is armed and presently dangerous. The officer must have an objectively reasonable belief, supported by specific, articulable facts, that his safety or that of others is in danger.

The court emphasized that Flowers cooperated fully with the officers, and the officer who conducted the frisk was not alone. The officer had simply frisked Flowers as a matter of routine, which was wrong. The court also rejected the State's argument that the officer's actions were reasonably justified because Flowers was a burglary suspect. The court refused to presume that every burglary suspect is armed and dangerous so as to justify a ***Terry*** frisk for weapons.

*Question: What was the officer's error in this case?

PLAIN TOUCH DOCTRINE ADOPTED IN ILLINOIS

Appellate Newsletter, Appeals Division of the Cook County State's Attorneys Office, 5/95

The Illinois Supreme Court has adopted the plain touch doctrine and incorporated it into the state's constitutional law. **People v. Mitchell**, No. 76722 (Ill. Sup. Ct. April 20, 1995). Officer King saw Curtis Mitchell driving down an alley of Orleans Street, an area of the city that has a high incidence of auto theft. Mitchell was driving without any light and did not have license plates. While the officer kept the car under surveillance, Mitchell pulled over and parked the car. After Mitchell tried to walk away from him, Officer King started asking questions about the ownership of the car. As he stood next to the car, King could see that the steering column had been "peeled." He could also see crack pipes and pieces of scouring pads often used for pipe filters. King then conducted a pat-down frisk for weapons pursuant to **Terry v. Ohio**, 392 U.S. 1 (1968) and felt an object inside Mitchell's shirt pocket. King said he did not believe the object was a weapon; he thought it was probably a piece of rock cocaine inside a plastic baggie. Officer King reached inside, seized the item, and found cocaine. King arrested Mitchell and charged him with possession of a controlled substance.

The United States Supreme Court created the plain touch doctrine in **Minnesota v. Dickerson**, 113 S.Ct. 2130 (1993), when it decided an officer can make a warrantless seizure if, during the course of the lawful execution of a **Terry** frisk, he acquires probable cause to believe the suspect is carrying contraband. **The court cautioned that the incriminating nature of the object must be immediately apparent from the officer's sense of touch, however...**[emphasis added]

The "Plain Touch" or "Plain Feel" Doctrine

From the Illinois Supreme Court decision, ***People v. Mitchell***, 650 N.E.2d 1014 (1995).

Pages 1023-4:

...Application of the "Plain Touch" Doctrine

The only matter remaining for our consideration is application of the doctrine to the facts of this particular case. Before proceeding, we note that a trial court's ruling on a motion to suppress evidence is subject to reversal only if manifestly erroneous. *De novo* review by this court is appropriate, however, when, as here, neither the facts nor the credibility of witnesses is questioned. *People v. Fosky* 136 Ill.2d 66, 143 Ill.Dec. 257, 554 N.E.2d 192 (1990).

We reiterate those facts necessary to our analysis and application of the doctrine. Initially, we note that there is no contention that either the stop or the frisk of this defendant was improper under Terry. Thus, as required for "plain touch" purposes, there was prior legal justification for the intrusion.

Proceeding, then, from the time of the Terry stop, the record reveals that King [the officer] observed crack pipes and scouring pads on the front seat of the automobile. He described the pat-down as starting with the defendant's wrists and making his way up the defendant's upper body, "just feeling." When he felt the defendant's chest, by his pockets, he felt a foreign object inside his shirt pocket. The object felt to King like a piece of rock inside a small baggie. Prior to seizing the object, King believed it was a controlled substance, "more specifically he felt that it was probably rock cocaine." There is nothing in the record to suggest that King manipulate the object in order to determine its identity.

King has been a Chicago Police Officer for about 17 years. In his experience as a police officer he has seen pipes used to smoke crack cocaine over one hundred times and has also recovered narcotics.

Based upon these facts, we find that the requirements for seizure under the "plain touch" doctrine have been met and seizure of illegal contraband was, therefore, proper. Defendant argues, however, that given the size of the substance recovered from his person, it was not possible that King could have immediately identified the object as narcotic. He relies on *Commonwealth v. Marconi*, 408 Pa.Super. 601, 597 A.2d 616 (1991), as support for the proposition that given the size of the object, any claimed identification of the object could not be certain.

We disagree with defendant's impossibility argument. Given that King observed

the paraphernalia on the seat of the car, he likely suspected that drugs were present, either on the defendant's person or in his vehicle. Thus, it is conceivable that King's prior police experience with drugs, coupled with his observation of drug paraphernalia on the seat, and his tactile perceptions of the objects in defendant's pocket, enabled his ready tactile identification of the object...

*Question: Does Illinois follow the "plain touch" / "plain feel" doctrine? Describe the rule.

Court weighs 'Terry stops,' Anonymous Tips

From the "Criminal Law" column of the "Chicago Daily Law Bulletin"
by Ronald D. Menaker

More than 30 years ago, in what has become a landmark case, the U.S. Supreme Court declared that a police officer, for the protection of himself and others, may conduct a carefully limited pat-down search for weapons of a person engaged in unusual conduct where there the officer reasonably concludes in light of his experience that criminal activity may be afoot and that the person in question may be armed and presently dangerous. *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

What constitutes "reasonable suspicion" sufficient to allow a police officer to stop and frisk someone can be a troublesome question. One area that has been particularly problematic is whether an informant's tip can constitute the requisite quantum of suspicion. As most practitioners are aware, courts have traditionally distinguished between the type of informant in resolving that question.

For example, if the tip comes from a person known to police, someone who has provided reliable information in the past, the information may be sufficient to justify a "***Terry*** stop" because the person's reputation can be assessed and he can be held responsible if his information turns out to be false.

On the other hand, if the person providing the information to the police is not known, there is not way to ascertain the informant's basis of knowledge or the veracity of his information. The informant does not place his credibility at risk and can lie with impunity. As such, the risk of fabrication becomes unacceptable.

For these reasons, anonymous tips are generally considered insufficient to justify an investigative stop.

Over the year, however, this general rule regarding anonymous tips has been modified. Today, most courts agree that if an anonymous tip is suitably corroborated, it exhibits a sufficient indicia of reliability to provide reasonable suspicion to allow a *Terry* stop.

In the case of *Alabama v. White,* 496 U.S. 325, 110 S.Ct. 2412, 110 L.Ed.2d 301 (1990), for example, the police received anonymous information that a woman was carrying cocaine and that she was expected to leave a particular building at a specified time and enter a specific type of car. The U.S. Supreme Court noted that, by itself, the anonymous nature of the tip would not have justified a *Terry* stop. However, because subsequent police observation showed that the informant had accurately predicted the woman's movements, it became reasonable to conclude the tipster had inside information about the suspect sufficient to credit the assertions regarding the cocaine.

The bottom line is that if an anonymous tip carries with it a sufficient indicia of reliability, it can provide reasonable suspicion to justify an investigatory stop.

Whether an anonymous tip is sufficiently reliable to provide reasonable

suspicion to justify such investigative stops is often subject to extensive debate.

Recently, the U.S. Supreme Court attempted, once again, to clear the waters. In *Florida v. J.L.*, No. 98-1993 (March 28), the high court held that reasonable suspicion justifying an investigatory stop requires that a tip be reliable in its assertion of illegality -- not just its tendency to identify a particular person.

On October 13, 1995, the Miami police received an anonymous telephone tip that a young black man wearing a plaid shirt and standing at a particular bus stop was carrying a gun. Shortly after the information was received, two police officers were dispatched to investigate. Upon arriving at the bus stop, they noticed three black youths standing around.

One of the three, Defendant J.L., who was 15 years old at the time, was wearing the type of shirt the tipster described. None of the youths was doing anything to make the officers suspect that they were involved in criminal behavior. The officers did not spot any weapons, and none of the individuals made any furtive movements.

Nevertheless, based on the anonymous information, one of the police officers frisked J.L., and a handgun was seized from his pocket. The defendant was subsequently charged with violating Florida law by carrying a concealed weapon without a license.

Before trial, J.L. moved to suppress the gun, claiming that is was the fruit of an unlawful search.

Eventually, the Florida Supreme Court, affirming the trial judge, held the search invalid under the Fourth Amendment. Because the Florida court's decision conflicted with decision from other courts, the State of Florida sought review before the U.S. Supreme Court.

Before the top court the government and the State of Florida took the position that the anonymous information that led to J.L.'s arrest was sufficiently reliable because it described the suspect's visible attributes: he was a young black male wearing a particular shirt, standing at a specific bus stop. Moreover, the government argued, the high court should create at "firearm exception" to the ***Terry*** standard. Under such an exception at tip alleging an illegal gun would justify an investigative stop and subsequent search, even if the accusation would otherwise fail standard reliability testing.

In an opinion by Justice Ruth Bader Ginsburg, the Supreme Court rejected the government's position on both accounts.

With respect to the issue of the reliability of the information, the court noted that an accurate description of a subject's readily observable location and appearance is reliable--but only in a limited sense. It clearly will assist the police in correctly identifying the person

whom the tipster means to accuse, but it does not show he has knowledge of any concealed criminal activity. The "reasonable suspicion" requirement authorizing a ***Terry*** stop mandates that a tip be reliable in its assertion of illegality, not just in its tendency to identify a particular person.

As for the government's second contention that firearms are dangerous and extraordinary dangers justify unusual precautions, the court said it believed the ***Terry*** requirement of reasonable suspicion--rather than probable cause--responds to that very concern.

The so-called firearm exception that the government urged would enable any person seeking to harass another to set in motion an intrusive and embarrassing police search of the targeted person simply by placing an anonymous call falsely reporting the target's unlawful possession of a gun, the Supreme Court explained.

Therefore, the top court concluded, an anonymous tip that a specific person is carrying a gun, without more, is insufficient to justify a police officer's stop and frisk of that person.

Question: What is the significance of this holding?

Hour 10 of 16

TOPIC: ARREST, SEARCH & SEIZURE

MANDATORY READING MATERIAL:

1. Illinois Compiled Statutes:

Temporary Questioning Without Arrest	725 ILCS 5/107-14
Search During Temporary Questioning	725 ILCS 5/108-1.01

2. Handouts

STUDENT PERFORMANCE OBJECTIVES

Given a lecture and discussion, the trainee, when given a multiple choice exam, will demonstrate that he or she recognizes the elements of the following sections of state law:

1. Define "reasonable suspicion." **(STATE SPO 3 (SS201))**

2. Define "frisk." **(STATE SPO 5 (SS203))**

3. Recognize circumstances when a "stop" is authorized. **(STATE SPO 20 (SS200))**

4. Recognize circumstances when a "frisk" is authorized. **(STATE SPO 21 (SS200))**

5. Recognize circumstances when seizure is authorized under the "plain feel" doctrine. **(STATE SPO 22 (SS200))**

"You Be the Judge"

Stop and Frisk

1. Officer Howe was an experienced police officer who had been on the same beat for many years, an area with high drug-related activity. As a result of the continuous time spent in the same area, he knew almost everybody on the beat and was familiar with conduct which indicated the sale of drugs. One day, Officer Howe saw Susan, on a corner commonly used for drugs sales, handing money to a stranger in exchange for a small object. This led Officer Howe to be suspicious that Susan had just received drugs. **Officer Howe knew Susan, knew she sometimes bought and used drugs. Officer Howe also knew that although involved with illegal drugs, Susan was not a threat to his safety.** Officer Howe approached Susan and immediately patted her down as he questioned her about what she was doing. He felt a soft parcel in her jeans pocket, reached inside, and seized the parcel which appeared to be cocaine. **At no time did Officer Howe suspect that Susan was armed,** but he did suspect that she might be carrying drugs. Susan was arrested for possession of a controlled substance. The parcel later tested positive for cocaine. At her trial, Susan moved to suppress the parcel, arguing that it was the result of a violation of her Fourth Amendment Rights. Should her motion be granted? You be the judge.

2. Same facts as above with respect to the officer's experience and observations, but now assume that Officer Howe did not know Susan, and **did reasonably believe that Susan might be carrying a knife or a gun** (assume he can articulate such facts). After stopping her because of what he observed, he patted her down and felt a **soft parcel inside her jeans pocket**. He reached inside her jeans, took out the parcel and believed it was cocaine. He arrested Susan. In this case may Susan have the cocaine suppressed at her trial for possession of a controlled substance? What would Officer Howe have to be able to articulate?

3. In July 1992, a police officer saw the defendant driving 15-year-old Oldsmobile in an alley near Orleans Street in Chicago. The car's lights were not on and the officer could not see any license plates. Because the area had a high rate of auto theft, the officer kept the car under surveillance.

After being followed for a few blocks, the defendant pulled over and parked the car. The officer approached and began questioning the defendant about the car's ownership and his reason for driving without lights. The officer observed that the steering column of the car had been "peeled" and saw "crack pipes" and small pieces of copper scouring pads on the front seat of the car. The officer knew that the pipes were used to smoke cocaine and the scouring pads were used as filters inside the pipes.

The officer conducted a pat-down of the defendant, primarily to determine if he had any weapons. During the search, the officer felt a foreign object in the defendant's shirt pocket. The officer did not believe what he felt was a weapon but instead was like a piece of rock inside a small plastic bag. The object turned out to be rock cocaine. The defendant was then arrested for possession of narcotics.

Prior to trial, the defendant filed a motion to quash the arrest and suppress the evidence. He argued that the officer's seizure of the cocaine went beyond the scope of a **Terry v. Ohio** pat-down search.

Assume the stop was lawful, and assume the officer could justify doing the pat-down. Focus just on the seizure of the crack during the pat-down. Is the evidence admissible? Apply **Terry v. Ohio** and **Minnesota v. Dickerson**. What would the officer need to articulate? How would the officer do that in this situation?

Hour: 11 of 16

TOPIC: ARREST, SEARCH & SEIZURE

MANDATORY READING MATERIAL:

1. United States Constitution - 4th Amendment

2. Handout: "Expectation of Privacy"

STUDENT PERFORMANCE OBJECTIVES - S.P.O.'s

Learning Objectives (SPO'S)

1. Recognize circumstances requiring search warrant prior to searching: "expectation of privacy." (STATE SPO 23 (SS900))

2. Define contraband. (STATE SPO 8 (SS101))

3. Recognize the name of the case which established the two-part test of the expectation of privacy: **U.S. v. Katz**. (CPD SPO SS 25)

4. Describe the two part test of **U.S. v. Katz**. (CPD SPO SS 26)

5. Recognize examples of places for which a search warrant would be required. Consider the following: (1) a person, (2) a church, (3) a reporters home. (CPD SPO SS 27)

6. Recognize circumstances constituting open view ("plain view" and "open fields"). (STATE SPO 29 (SS900))

7. Recognize that the use of flashlights do not constitute searches. (STATE OUTLINE VII.B.)

8. Recognize that electronic beepers used to trail vehicles do not require search warrants. (STATE OUTLINE VII.F.)

9. Recognize what is meant by "abandoned property." (STATE OUTLINE VII.E)

10. Recognize that no search warrant is required to re-open containers opened by private persons. (STATE OUTLINE VII.G.)

11. Recognize that dog sniffs in places open to the public do not constitute searches.

(STATE OUTLINE VII.C.)

Summary

A. In order for a person to claim that their Fourth Amendment rights have been violated, they must have had a legitimate "expectation of privacy" in the area that the government look into or the item that was taken. **If there is a legitimate expectation of privacy, then generally the police will need a warrant to search lawfully.**

B. The test for whether or not someone has a legitimate expectation of privacy comes from the 1967 United States Supreme Court case **U.S. v. Katz.** It is a two-pronged test:

1. Did the person have a subjective or actual expectation of privacy in the area?
And
2. Was the expectation reasonable, one that society would recognize?

C. **Contraband:** any property the possession or transportation of which is illegal. Typical examples are narcotics and illegal weapons. Keep in mind that this is what police are interested in searching for and seizing.

D. "**Open Fields"** are not protected by the Fourth Amendment. An open field is beyond the curtilage of the home. A person has no legitimate expectation of privacy in and open field and the police can look into that type of area without a warrant, without probable cause, regardless of the fact that the property is privately owned.

E. Objects that are in **"Plain View"** are not protected officer had a legal right to be in the place from which he or she saw the object. If the officer seized the item, also inquire whether the officer had access to the object based on some prior justification.

F. **"Abandoned"** property is not protected by the Fourth Amendment. Trash put out on the curb, or property in which a person disclaims a possessory interest, are examples of abandoned property. Once property is abandoned the police may look in it and /or take it without a warrant, without probable cause.

G. No search warrant is required to use a **flashlight on items in plain view, electronic beepers to follow vehicles, do a dog sniffs of areas in public places, or to examine the**

contents of containers already opened by private citizens.

Evaluation Questions

1. When is a search warrant required? (STATE SPO 23 (SS900))

2. What is "contraband?" (STATE SPO 8 SS101))

3. What is the name of the case which described a two-part test for whether or not someone has an expectation of privacy in an area? (CPD SPO SS 25)

4. Describe the test outlined in the case above. (CPD SPO SS 26)

5. Recognize examples of places for which a search warrant would be required. Consider the following: (1) a person, (2) a church, (3) a reporters home. Does the general warrant requirement apply to these areas? (CPD SPO SS 27)

6. What is meant by "open fields?" Is a search warrant required for these situations? (STATE SPO 29 (SS900))

7. What is meant by "plain view?" Is a search warrant required for these situations? (STATE SPO 29 (SS900))

8. Does the use of a flashlight require a search warrant? (STATE OUTLINE VII.B.)

9. Does the use of electronic beepers to trail a vehicle require a search warrant? (STATE OUTLINE VII.F.)

10. What is meant by abandoned property? (STATE OUTLINE VII.E.)

11. Is a search warrant required to search a container already opened by a private person? (STATE OUTLINE VII.G.)

12. Is a search warrant required to have a dog sniff a place open to the public? (STATE OUTLINE VII.C.)

"You Be the Judge'

Expectation of Privacy

1. Officer Baker was on foot patrol when she discovered what appeared to be a lost dog. The dog had a collar with a name and an address on it. Officer Baker took the dog to that address. A woman answered the door and identified herself as the dog's owner, and invited the officer inside the house. Once inside, Officer Baker saw and immediately recognized cannabis on a table next to the door. The woman was arrested and prosecuted for possession. At trial the woman argued that the cannabis should be suppressed because the officer did not have a warrant. Is she correct? You be the judge.

2. Officer Whitley was on foot patrol and standing on the sidewalk when he looked through the front window of Defendant's house and saw what appeared to be cannabis plants. He went up to the window, opened it, and climbed inside. Once inside Officer Whitley confiscated the plants, which turned out to in fact be cannabis. Defendant was charged with violating the Cannabis Control Act. He moves to suppress the plants because they are the result of an unlawful seizure. Would you agree? You be the judge.

Hour: 12 of 16

TOPIC: ARREST, SEARCH & SEIZURE

MANDATORY READING MATERIAL:

1. Handouts

2. Illinois Statutes

Grounds for a Search Warrant	725 ILCS 5/108-3
Issuance of a Search Warrant	725 ILCS 5/108-4
Persons Authorized to Execute a Warrant	725 ILCS 5/108-5
Execution of Search Warrants	725 ILCS 5/108-6
Use of Force in Execution of Search Warrant	725 ILCS 5/108-8
Detention and Search of Persons on Premises	725 ILCS 5/108-9
Return to Court of Things Seized	725 ILCS 5/108-10

STUDENT PERFORMANCE OBJECTIVES

Given a lecture and discussion, the trainee, when given a multiple choice exam, will demonstrate that he or she recognizes the elements of the following sections of state law:

1. Define "search warrant." (**STATE SPO 7 (CF801))**

2. Define "contraband." **(STATE SPO 8 (SS101))**

3. Identify the meaning of probable cause and particularity requirements for the issuance of a search warrant. **(STATE OUTLINE XI.D)**

4. Identify grounds for which a search warrant will be issued. 725 ILCS 5/108-3; 725 ILCS 5/108-4
(STATE SPO 24 (SS900))

5. Identify procedures for obtaining a search warrant. 725 ILCS 5/108-3**;** 725 ILCS 5/108-4 **(STATE SPO 25 (SS900))**

6. Identify elements of a complaint for a search warrant and search warrant. 725 ILCS 5/108-3; 725 ILCS 5/108-4 **(STATE SPO 26 (SS900))**

7. Recognize who is authorized to execute a search warrant. 725 ILCS 5/108-5. **(CPD SPO SS 28)**

8. Identify procedures for executing a search warrant. 725 ILCS 5/108-6 **(STATE SPO 27 (SS900))**

9. Identify procedures for searching premises with a warrant [scope]. **(STATE SPO 28 (SS900))**

10. Recognize, in general, how much force may be used in executing warrants. **(CPD SPO SS29)**

11. Recognize the requirement that an officer must knock and announce before entering to execute a search warrant. **(STATE OUTLINE XI.K)**

12. Recognize circumstances when an officer may use force in execution of search warrant without knocking and announcing. 725 ILCS 5/108-8 **(STATE OUTLINE XI.L.)**

13. Recognize how long, by statute, a warrant remains valid. 725 ILCS 5/108-6 **(STATE OUTLINE XI.H.)**

14. Recognize the authority of officers to detain and search persons on premises. 725 ILCS 5/108-9 **(STATE OULINE XI.M.)**

15. Define informant's privilege and identify limitations upon the doctrine. **(STATE OUTLINE XIII)**

16. Recognize the advantages of acting under the authority of a warrant in conducting a search [and the good faith exception]. **(STATE OUTLINE XI.F)**

17. Identify the role of the State's Attorney regarding warrant authorization. **(STATE SPO 42 (CP400))**

18. Define "anticipatory warrant." **(STATE OUTLINE XI.G.)**

19. Identify procedures for inventory of property [725 ILCS 5/108-10] **(STATE SPO 31 (SS300)**

Search Warrants

A. **Define Search Warrant :** _____.
It is a command to peace officers or those named in the warrant that particular items be seized from a particular place. **Define search warrant. (STATE SPO 7 (CF801))*

B. **Who may issue**: neutral magistrate (e.g. judge).

1. Neutral party: means detached from law enforcement, and without pecuniary interest in the issuance. The magistrate has to decide whether or not ____exists. Being neutral in the process reduces the likelihood that unconstitutional warrants will be issued.

C. **Police officer seeking issuance of warrant must put facts establishing probable cause into a _____ statement.** *******Requirement that probable cause be in writing in the complaint for the search warrant. STATE OUTLINE XI.E*

**Meaning of probable cause and particularity requirements for the issuance of search warrants. STATE OUTLINE XI.D.*

1. **Particular description:** affidavit should contain this information because the warrant itself will have to contain the same in order to meet the standards of the _____ ("particularly describe...the place to be searched, and the...things to be seized").

2. **Information not stale:** the information in the affidavit must be _____ so that the magistrate could reasonably believe that the items to be searched for are still on the premises to be searched.

3. Use of Informants

   a. Often information used to build_____ comes from

informants. These may be people who themselves are involved in criminal activities. Citizens can also be informants. Also, it may be an anonymous tip that provides police with information.

b. The test for whether an informant's tip creates probable cause for search (or arrest) is called the "_____" test. This means that in cases where informant's tips are used the test for establishing probable cause is the same as in other cases. **Illinois v. Gates**, 462 U.S. 213 (1983).

c. As long as the neutral magistrate can reasonably find that, upon consideration of the informant's tips and all other information, there is _____ , he or she may issue the warrant.

d. Criminal informants v. Citizen informants

1. Citizen informants are generally_____. If the informant is anonymous, the court may require more information to show credibility (independent police work to back up tip).

2. If an informant makes a statement against his or her own interest, this has the effect of making him or her seem _____. Thus, if in providing the information the informant implicates him or herself, this makes him or her more believable. **U.S. v. Harris**, 403 U.S. 573 (1971). This is called a **statement against penal interest.**

D. **INFORMANT'S PRIVILEGE: the_____ has the privilege to withhold from disclosure the_____ who have furnished information to law enforcement about criminal activity.**
**Define informant's privilege and identify limitation upon the doctrine. STATE OUTLINE XIII.*

E. **Requirement of particular description: Fourth Amendment requirement of particularity for warrants.** **Meaning of probable cause and particularity requirements for the issuance of search warrants. STATE OUTLINE XI.D.*

1. **Place to be searched: Fourth Amendment requires a particular description of the premises to be searched.**

   a. **Description need not be absolutely technically correct, just accurate enough so that the officer executing the warrant _____.**

   b. Apartment buildings: warrant should contain _____ or the _____ to be searched, so as not to subject other people in the building to a needless search.

2. **Items to be seized: the Fourth Amendment requires a particular description of the things to be seized.**

   a. The things to be seized must be _____ in the warrant.

   b. Contraband: items illegal to possess or transport (e.g. _____).
   **Define contraband. (STATE SPO 8 (SS101))*

F. **Scope of the search:** Where you can look is guided by what the warrant _____ to be seized. Anything illegal found in plain view in these spaces during the search for those items, may also be seized.

**Circumstances which determine the scope of the search under a search warrant. (STATE OUTLINE XI.I)*

*******Identify procedures for searching premises with a search warrant. (STATE SPO 28 (SS900))*

G. **What may be seized**

*******Identify procedures for searching premises with a search warrant. (STATE SPO 28 (SS900))*

1. Certain classes of evidence have always been held to be seizable under the constitution pursuant to a search warrant which particularly describes them:
   a. _____ (e.g. gun)

b._____(e.g. stolen money)
c._____(possession of item is illegal)
**Define contraband. (STATE SPO 8 (SS101))*

H. **Execution of warrants: ****Identify procedures for executing a search warrant. (STATE SPO 27 (SS900))*

1. Period within which warrant must be executed:_____.
(725 ILCS 5/108-6). Any warrant not executed within such time shall be **void. It shall be returned to the court and marked "not executed."** **How long, by statute, a warrant remains valid after issuance in Illinois. (STATE OUTLINE XI.H.)*

2. Time of day: about half the states restrict the execution of search warrants to daytime hours, absent special circumstances. Illinois does not! **In Illinois the warrant may be executed at_____ _____ (725 ILCS 5/108-13).** **Procedures for executing warrants. (STATE SPO 27 (SS900))*

3. **Knock and Announce**:
The _____ is that the officer must announce that he or she is a law enforcement officer, possesses a warrant, and is there to execute it.
What are some legitimate reasons for failing to knock and announce police presence?

_____.
******Requirement that officers knock and announce. (STATE OUTLINE XI.J)*
**Circumstances in which officer may make forced entry to execute a warrant without knocking and announcing. (STATE OUTLINE XI.K.)*

4. **Force to make Entry: Where officers identify themselves and are refused entry, force may be used to gain entry.** How much?_____
_____amount of force.
**Procedures for executing warrants. (STATE SPO 27 (SS900))*

I. **Good faith exception**
1. Question: What happens if the search warrant turns out to be invalid, e.g. issued

without probable cause?

2. Answer: If police _____ _____ that the warrant they have is valid, the exclusionary rule will not apply. Items seized pursuant to the invalid warrant will be admissible at trial of person whose constitutional rights have been violated. U.S. v. Leon, 468 U.S. 897 (1984). In addition to clearly meeting the constitutional requirement, this is a benefit of having a search warrant. **Advantages of acting under the authority of a warrant in conducting a search. (STATE OUTLINE XI.F.)*

J. What is the role of the State's Attorney regarding search warrant authorization?
(STATE SPO 42 (CP400))

K. What is an anticipatory search warrant? A search warrant that is issued on the basis of an affidavit showing probable cause that there will be certain evidence at a specific location at a _____.

**Meaning of anticipatory warrant. (STATE OUTLINE XI.G.)*

IT IS ALWAYS BETTER TO HAVE A SEARCH WARRANT! IF THERE IS ANY DOUBT, GET A WARRANT!

Answer the following questions after reading Article 108 of Chapter 725 of the Illinois Compiled Statutes. Any questions not completed in class are for homework.

1. What documents must be prepared in writing by an officer seeking a search warrant? 725 ILCS 5/108-3(a). **(STATE SPO 25 (SS900))**

2. What amount of evidence is required in order for a judge to issue a search warrant? 725 ILCS 5/108-3(a). **(STATE SPO 24 (SS900))**

3. What two things must be described, with particularity, in order for a judge to issue a search warrant? 725 ILCS 5/108-3(a). (**STATE SPO 26 SS900)**

4. What types of things might a search warrant command the seizure of? 725 ILCS 5/108-3(a)(1) and (2). **(STATE SPO 26 (SS900))**

5. Who has the authority to execute the search warrant? 725 ILCS 5/108-5. **(CPD SPO SS 28 (SS900))**

6. Within how much time must a search warrant be executed? 725 ILCS 5/108-6. **(STATE OUTLINE XI.H.)**

7. What happens to the search warrant that is not executed within the requisite time period? 725 ILCS 5/108-6. **(STATE OUTLINE XI.H.)**

8. In general, how much force may be used to make entry to execute a search warrant? 725 ILCS 5/108-8(a). **(CPD SPO SS 29)**

9. When may a "no-knock" warrant be issued? 725 ILCS 5/108-8(b). **(STATE OUTLINE XI.L.)**

10. In executing a search warrant, may officers detain persons in the place at the time? 725 ILCS 5/108-9. **(STATE OUTLINE XI.M.)**

11. What reasons would justify detention of persons in the place where a search warrant is executed? 725 ILCS 5/108-9(a) and (b). **(STATE OUTLINE XI.M.)**

12. After a search warrant is executed and items seized, where do those inventoried items go? 725 ILCS 5/108-10. **(STATE SPO 31 (SS300))**

SEARCH WARRANTS

I. THE FOURTH AMENDMENT

"The right of the people to be secure in their persons houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized."

II. DEFINE SEARCH WARRANT

A search warrant is a legal document giving the police the authority to search persons and premises and to seize instruments articles and things.

III. ISSUANCE OF A SEARCH WARRANT

A. A **written** complaint, or affidavit, is presented to a judge. ***(725 ILCS 5/108-3)***

B. The complaint, or affidavit, must be **sworn to under oath** or affirmation by the person presenting it, usually the police officer. ***(725 ILCS 5/108-3)***

C. The complaint must state specific **facts establishing probable cause.** ***(725 ILCS 5/108-3)***

D. The complaint very **particularly describes the place or person to be searched** and the things to be seized. ***(725 ILCS 5/108-3)***

E. The search warrant must state the **time and date** of issuance and be **signed by the Judge** or neutral magistrate. ***(725 ILCS 5/108-4)***

IV. PROCEDURES FOR EXECUTING A SEARCH WARRANT

A. The warrant shall be executed **within 96 hours** from the time of issuance. ***(725 ILCS 5/108-6)***

B. If the warrant is executed, **a copy shall be left with any person** from whom any

C. If no person is available, **a copy shall be left at the place** from which the

D. If no person is present and no items are seized, a **copy of the warrant shall be left in a prominent place.** ***(725 ILCS 5/108-6)***

V. PROCEDURES FOR SEARCHING PREMISES WITHOUT A WARRANT

A. All **necessary and reasonable** force may be used to make any entry into any building or property or part thereof to execute a search warrant. ***(725 ILCS 5/108-8)***

B. A police officer must **knock and announce** his/her office when executing a search warrant. ***(725 ILCS 5/108-8)***

C. A judge may issue a NO KNOCK WARRANT pursuant to ***725 ILCS 5/108-8(b)***.

VI. DETENTION AND SEARCH OF PERSONS ON PREMISES

A. A valid search warrant gives the police the authority to detain occupants of the premises while the search is conducted. ***(725 ILCS 5/108-9)*** This detention can be justified using the "reasonable suspicion" standard of **Terry v. Ohio**, 392 U.S. 1 (1968). It is reasonable to be suspicious that persons on the premises may attempt to leave with the items being searched for, for example.

B. A person's mere presence at the premises does not, without more factors, give the police probable cause to search the person or reasonable suspicion to frisk the person. **Ybarra v. Illinois**, 444 U.S. 85 (1979).

CPD SEE GENERAL ORDER ON SEARCH WARRANTS

"You Be the Judge"

Search Warrants

1. Joe lives in an apartment. Occupants of neighboring apartments complain to the landlord about the smell of cannabis coming from the apartment. The landlord goes to the apartment and confirms that Joe possesses cannabis (he sees and smells it, and observes bags of cannabis in the living room). The landlord calls the police. The police could have obtained a warrant, but lazily failed to do so. Instead they went immediately to the apartment, and forced their way past Joe when he answered the door. They too smelled and saw the cannabis, and arrested Joe for violating the Cannabis Control Act. At Joe's trial can he have the cannabis suppressed on the grounds that it is the fruit of an unlawful search? You be the judge.

2. Suppose the landlord in the above case calls the police for the same reasons, and four weeks later the police present the landlord and the complaint to the judge, with the goal of obtaining a warrant. Might there be any problem in securing the warrant? You be the judge.

Hour: 13 of 16

TOPIC: ARREST, SEARCH & SEIZURE

MANDATORY READING MATERIAL:

Illinois Compiled Statutes: 725 ILCS 5/108-1
Handouts

STUDENT PERFORMANCE OBJECTIVES

Given a lecture and discussion, the trainee, when given a multiple choice exam, will demonstrate that he or she recognizes the elements of the following sections of state law:

Learning Objectives (SPO's)

1. Recognize circumstances when search incident to an arrest is authorized. 725 5/108-1 (SPO 38 (SS601))
2. Identify procedures for search incident to an arrest. (SPO 39 (SS600))
3. Recognize circumstances when emergency search is authorized. (SPO 34 (SS701))
4. Identify procedures for conducting an emergency search. (SPO 35 (SS700))
5. Recognize circumstances when search of premises in hot pursuit is authorized. (SPO 32 (SS701))
6. Identify procedures when search of premises in hot pursuit is authorized. (SPO 33 (SS700))

The "Frisk" and the "Search Incident to an Arrest"

THE FRISK (a reminder of the restrictions)

NOT AUTOMATIC TO STOP: MIGHT BE lawful after a lawful **Terry** stop based upon "reasonable suspicion" of crime.

NEED A REASON THAT APPLIES IN THE PARTICULAR CASE: Lawful if during the stop, the officer reasonably believes that the particular suspect may be **armed and dangerous; the officer reasonably suspects that he or another is in danger of attack.** *Officers' needs for safety generally in society does not justify frisking all people.* The Illinois Supreme Court clearly restated this in **People v. Flowers**, 688 N.E. 2d 626 (1997). It is about safety, but officers must articulate the facts with respect to the person being patted down *in that particular situation*.

LIMITED SEARCH: The frisk is described as a **LIMITED PAT DOWN OF THE OUTER GARMENTS**, looking **FOR WEAPONS.** Even though the Illinois Supreme Court has adopted the "plain touch" doctrine for seizing other contraband that which is identifiable immediately to the touch, **People v. Mitchell**, 650 N.E. 2d 1014 (1995), the reason for the frisk is to find weapons.

SEARCH INCIDENT TO ARREST. **See 725 ILCS 5/108-1.**

LAWFUL ARREST: Arrest must be based on **PROBABLE CAUSE.**

CUSTODIAL ARREST: The detention is such that the person will be taken to the police station for booking. For example, ordinary traffic violations alone do not justify this search.

AUTOMATIC: search is automatically justified no matter what the offense is. As long as the arrest is lawful and custodial, the offense itself is irrelevant. Minor crimes are not exempt.

FULL SEARCH: of the arrestee and the area within the arrestee's control. Not limited to a pat-down of outer garments or to a search for weapons only.

Bottom line: If you are making an arrest, you are justified in doing a full search automatically. If you are conducting an investigatory stop, then the reason, scope and purpose of your search are much more limited. Your

reports must reflect a recognition of these limits to show that your actions are lawful.

Emergency Entries and/or Searches

In deciding whether an "emergency" entry and/or search was justified a court will consider:

1. The stated "emergency;"
2. The gravity of the situation;
3 The scope of the intrusion, meaning was it REASONABLY RELATED to the emergency.

The 3 categories of justification for emergency searches:

1. Life
2. Health
3. Property

*Police officers have a "community caretaking" function, as well as job of stopping crimes.

*The scope of the warrantless entry and/or search must be limited by the particular emergency. Entering a home may be justified, but not opening all drawers, for example. Intruding in to the area must be necessary in order to assist.

*Fire scenes: No warrant is needed for firefighters searching/investigations during the fire. Investigations after the fire has been extinguished would require an administrative warrant.
[STATE OUTLINE VI.]

Hot Pursuit

1. A person cannot defeat a felony arrest that has begun in a public place by retreating in to a private area.

2. If an officer is in the pursuit of a person for whom there is probable cause for a felony, an officer can chase that person in to any place. Officers may also search for weapons that may have been

discarded during the chase.

3. If it is not a felony pursuit, then the officer needs to add exigent circumstances to justify the warrantless entry.

Evaluation Questions (to prepare student for test questions)

1. Describe the area an officer may automatically search pursuant to a lawful arrest.

2. For the search incident to arrest exception to apply the arrest must be _____ And _____?

3. If a police officer makes an arrest in a dwelling, what type of search of that dwelling can be performed because of that arrest?

4. What would a court consider if deciding whether or not an "emergency" justified the warrantless entry and/ or search?

5. What are the 3 categories of justifications for emergency entries and searches?

6. Without additional facts, would the emergency search exception allow a warrantless search of luggage at the scene of an accident involving an overturned vehicle?

7. Describe the hot pursuit exception to the warrant requirement.

"You Be the Judge"

Exceptions to the Search Warrant Requirement

1. Officer Jones was called next door to Defendant's residence on April 20, 1994. When he arrived he spoke with two women who said the Defendant had argued with them and hit one of them. The two women also said that Defendant told them that he was going to his apartment "to get a gun." Just as Officer Jones was approaching he came out of his townhouse, saw the officer, dropped a bag into a garbage can just outside his door, and immediately went back inside. Officer Jones opened the garbage can and in fact retrieved a gun.

   Defendant argued that the search and resulting seizure of the weapon violated his Fourth Amendment rights because he maintained a reasonable expectation of privacy in the contents of the garbage can, which was situated within the curtilage of his residence. The can was sitting on grass about two feet from the sidewalk and was leaning against the back of his townhouse, near the back door.

   The state argued not only that the defendant had no expectation of privacy in the contents of the garbage can but also that there had been exigent circumstances justifying the officer's search of it.

   The gun was used as evidence trial of Defendant for first degree murder (a murder which occurred on April 7, 1994). The trial resulted in a conviction and death sentence for Defendant. Should the evidence have been suppressed? You be the judge.

2. The police had probable cause to believe that a recent robbery of a jewelry store had been committed by Walter. The police could have obtained a warrant, but before they did one officer saw Walter on the street. The officer arrested Walter for the robbery and searched him. In Walter's pocket the officer recovered proceeds from the robbery (jewelry). At Walter's trial for the robbery, he seeks to suppress the jewelryon the grounds that it was discovered as the result of an unlawful warrantless search. Should the jewelry be suppressed? You be the judge.

Hour: 14 of 16

TOPIC: ARREST, SEARCH & SEIZURE

MANDATORY READING MATERIAL:

Handouts

STUDENT PERFORMANCE OBJECTIVES

Given a lecture and discussion, the trainee, when given a multiple choice exam, will demonstrate that he or she recognizes the elements of the following sections of state law:

1. Recognize circumstances when consent search is authorized. **(STATE SPO 36 (SS801))**

2. Identify procedures for consent searches. **(STATE SPO 37 (SS800))**

Consent Searches
Fourth Amendment Rights

I. Consent Searches Generally

A. **Another EXCEPTION TO THE WARRANT REQUIREMENT.** Officer may make a constitutional warrantless search if have consent of individual whose premises, effects, or person are to be searched.

B. **But the consent given MUST BE VALID**, meaning it must have been given _____. The court must conclude that the consenter felt free to say "no" to the officer under the totality of the circumstances.

C. **Burden on State**

1. Questions of voluntary consent are settled in favor of the Defendant.

2. Legal presumption that person did not consent.

3. Burden on State's Attorney to show that the proper party clearly, voluntarily and knowingly waived the right to refuse to give consent.

4. **This means that the officer obtaining consent to search must provide the state with information regarding the circumstances surrounding the consent.** A consent waiver form is one way for the officer to show the consent was given voluntarily.

D. What is the test to decide whether or not consent was given voluntarily?

Look at the **"TOTALITY OF THE CIRCUMSTANCES."** Some factors a court might consider:

1. How many officers confronted the defendant?
2. What was the mental/nervous condition of the consenting person?
3. Was the consenting person in custody?
4. Was the consenting person tricked into consenting?

E. Consenter's knowledge of right to refuse consent.

1. Is there a requirement that police inform the consenter of their right to refuse consent in order for the consent to be valid?_____.

2. RULE: Ignorance of the right to refuse to give consent is only ONE FACTOR to consider in the totality of the circumstances. Schneckloth v. Bustamonte, 412 U.S. 218 (1973).

F. Claims of Authority to Search

1. Although the failure to inform the consenter of the right to refuse to give consent will not invalidate the consent according the Supreme Court, a FALSE CLAIM OF PRESENT AUTHORITY will.

2. **Bumper v. North Carolina**, 391 U.S. 543 (1968). Where an officer lies and says that he has a search warrant, and then procures consent, the consent is invalid.

3. For consent to be considered to be voluntary, there must be more than mere submission to police authority.

4. Also, consent obtained after an illegal stop will not be voluntary.

II. Third Party Consent

A. Problem: consent of one person for search of property of another. (STATE SPO 36)

B. Joint Authority

1. Roommate Situations. If D and X are roommates, and share living space such as a living room in an apartment, each may consent to the search of that living room. It does not matter that the person giving consent is not the one the police seek evidence against, as long as that person has joint authority over the space and voluntarily gives consent.

2. But roommate must have _____ over the area for which they consent to be searched. If D and X are roommates, X cannot give consent for the search of D's individual bedroom, a space which is not shared with X.

3. If D is not present, X may give voluntarily consent for the search of the areas over which there is joint control; if evidence discovered incriminates D, it is admissible. If both parties are present however, they must both give voluntary consent for the search to be lawful and the evidence admissible.

C. Mistake as to Joint Authority

1. If police _____ BUT_____ believe that a person has joint authority over a premises, a search will be valid when consent comes from that person. **Illinois v. Rodriguez**, 497 U.S. 177 (1990).

2. **Rodriguez** is a very good case for police. The facts show how this case expands the ability of police to perform consent searches.

3. Officers must ask the right questions, assess the situation, and be prepared to explain in court why its was reasonable to believe that the person had the authority to give consent.

D. Schools and Students

High school and below: kids do not have the same constitutional rights in school and on school premises, engaging in school activities.

1. Students may be searched without a warrant and without probable cause by school officials. Where school officials have reasonable grounds to believe for suspecting that the search will lead to evidence that the student is violating either the laws or rules of the school, school official may perform a search reasonably related to the objectives of the search.
New Jersey v. TLO, 469 U.S. 325 (1985).

2. Note this does not mean that police may direct school officials to do the search in order to avoid the search warrant requirement. It would mean if the school official had the authority to do it, they would have power to grant good consent to police to search for them.

3. At least one court has explicitly held the a high school can give valid consent for search of student locker. **People v. Overton,** 229 N.E. 2d 596 (N.Y. 1967), cert. Granted and remanded for further consideration in light of **Bumper**, sub. nom. **Overton v. N.Y.**, 393 U.S. 85 (1968). **(This authority is clear if the police are assigned to work the school, otherwise the question has not been clearly answered.)**

4. Illinois School Code: 105 ILCS 5/10-22.10a. School boards are empowered to adopt a

policy to authorize school officials to request the assistance of law enforcement officials for the purpose of conducting reasonable searches of school grounds and lockers for illegal drugs, including searches conducted through the use of specially trained dogs.
[STATE OUTLINE VI.A.]

E. Landlords and Tenants, Hotel Guests

Landlord _____ consent to search of tenant's room even though has right to enter for cleaning. **Chapman v. U.S.**, 365 U.S. 610 (1961). But landlord may consent to search of areas of "common usage" such as hallways and common dining areas. See **U.S. v. Gargiso**, 456 F.2d 584 (2d Cir. 1972).

It is the person who lives there that has the expectation of privacy. People don't rent places and expect that when they are not home that their landlord will let people in to go through their belongings. The same would apply when someone is staying in a hotel room; while they are staying there they have the expectation of privacy.

III. Scope of Consent

Scope of the Consent

1. Search cannot exceed the physical bounds consented to.

2. Consenting person may grant permission to only one officer to search.

3. The length of the search may be limited by the consenter.

4. The search may be limited to a search for a certain item.

5. Once given, consent is presumed to continue, unless revoked.

6. Once revoked, consent may be re-granted.

7. Revocation of consent does not invalidate prior search conducted with voluntary consent.

Evaluation Questions

1. What is the test a court will apply to decide whether an individual voluntarily gave consent to search?

2. Is there a requirement that police inform the consenter of their right to refuse to give consent in order for consent to be valid? If not, why do departments choose to use consent waiver forms?

3. Will a false claim of authority invalidate consent?

4. Is submission to police authority equal to consent?

5. To obtain consent from a third party what must be true about the area to be searched?

6. What is the rule regarding mistaken belief about joint authority?

7. Do school officials have the authority to search students in high school and lower levels? May they give consent to search these areas?

8. Do landlords have the authority to give consent to police to search their tenant=s apartments?

9. Once consent is given, may a person withdraw consent?

10. May a person limit the scope of the search performed?

"You Be the Judge"

Consent

1. Carolyn rented a room in a house owned by Allison. Their agreement permitted Allison to keep a key to the room, and to enter it once every two weeks for cleaning. The police have probable cause to believe that Carolyn possessed drugs. They came to the house and found Allison at home but not Carolyn. They asked Allison for permission to search Carolyn's room. Allison allowed the police entry by using her key. In Carolyn's room, the police found illegal drugs. At her trial for possession, Carolyn argues the drugs were the result of an illegal warrantless search and should be suppressed. Do you agree? You be the judge.

2. Police task force received an anonymous tip about drug activity at the defendant's home in Herrick, Illinois. Acting on this tip the police went to the house. After the police on the door on the defendant's home, they discovered two men inside, neither of whom was the defendant or other known resident of the house. One of the men inside gave police permission to search the house, and the officers found drug paraphernalia and substances they suspected to be drugs.

   Defendant argued the evidence seized should be suppressed. Defendant testified that he was the sole owner of the house and that Jason Cole, who was not the man who gave consent, was his only tenant. Other people, including the two present when police arrived, sometimes spent the night. The man who gave police consent to search was not a tenant, did not pay defendant rent, utilities or any other expenses. The defendant said he did not give the man the authority to consent to the search.

   The state argued that the officers had a reasonable belief that they had valid consent to search. The state said the evidence should be admissible because the man who gave consent had the apparent authority to consent to the search and it was reasonable for the police to do the search with this consent.

   Should the evidence be suppressed? Was it reasonable under the circumstances for the officers to believe that the men present in the home had the authority to give them consent to search?
   You be the judge.

Hour: 15 of 16

TOPIC: ARREST, SEARCH & SEIZURE

MANDATORY READING MATERIAL:

Handouts

STUDENT PERFORMANCE OBJECTIVES - S.P.O.'s

Given a lecture and discussion, the trainee, when given a multiple choice exam, will demonstrate that he or she recognizes the elements of the following sections of state law:

1. Recognize that a traffic stop alone does not automatically authorize any warrantless search of a vehicle. (CPD SPO SS 29)

2. Recognize circumstances when search of motor vehicle without warrant is authorized. (SPO 40 (SS401))

3. Identify procedures for searching motor vehicle without warrant. (SPO 41 (SS400))

4. Recognize that there is no expectation of privacy regarding motor vehicle's VIN number. (STATE OUTLINE XV.)

5. Recognize circumstances when impoundment/inventory of property is authorized. (SPO 30 (SS301))

6. Identify procedures for impoundment/inventory of property. (SPO 31 (SS300))

Fourth Amendment Rights: Vehicle Searches

I. "Stop and Frisk"

A. Pennsylvania v. Mimms, 98 S.Ct. 330 (1977): police may order driver out of vehicle during lawful traffic stop.

B. Maryland v. Wilson, 519 U.S. 408 (1997): police may order passengers, as well as driver, out of vehicle during lawful traffic stops.

C. People v. Gonzalez, 704 N.E.2d 375 (1998): Illinois Supreme Court held that the occupants of a vehicle, which is legally stopped, may be subject to control of police officer, even though the officer has no suspicion of criminal behavior by the occupants.

- The authority to order occupants out and to remain is not the equivalent to the authority to search.
- Recognize that a traffic stop alone does not automatically authorize any warrantless search of a vehicle. (CPD SPO SS 29)
- Request for Identification from passengers: In **People v. Raymond Harris**, 886 N.E.2d 947 (2008), the Illinois Supreme Court upheld the lawfulness of an officer's request for identification from a passenger, which led to the discovery that the man was wanted on a warrant (and a search incident to arrest that led to the discovery of drugs). Citing **Illinois v. Caballes**, 543 U.S. 405,408 (2005), the court held that a warrant check on passengers is legal as long as the stop is not unnecessarily prolonged and it is done in a reasonable way. **However the identification must be given voluntarily, and the passenger is free to decline the request.**
- Request for consent to search:

  In **People v. Cosby**, 898 N.E.2d 603 (2008), the defendant was lawfully stopped for a traffic violation. The officer returned the defendant's paperwork, and then asked for consent to search the vehicle. Permission to search was given, and the search led to the discovery of drug paraphernalia in the car. The defendant was convicted for possession of the paraphernalia.

  The Court in **Cosby** held that **the stop ended when the officer returned the paperwork**. Since the defendant was no longer seized, and no second seizure occurred, the consent was valid and the evidence admissible. The court found that there was no basis to find that the request to search was part of the initial stop.

  In **People v. Oliver**, 925 N.E. 2d 1107 (2010), similarly, after a lawful traffic stop occurred, the officer requested consent to search the vehicle. **In this case, since the request for consent was made after the defendant was told he was not going to be arrested, and was free to leave, the Court also concluded that it was not part of the initial stop.** No second seizure was determined to have occurred in this case either. The search, which lead to the discovery of cocaine in the trunk, was determined to have been based on valid consent.

D. **Michigan v. Long, 103 S.Ct. 3469 (1983):** police may do **Terry**-type protective "frisk" of the passenger compartment of a motor vehicle during lawful investigatory stop of vehicle. This is lawful if the police reasonably believe that an occupant of the vehicle is dangerous and might gain control of a weapon in the vehicle. Police may search any part of the passenger area, including containers therein, that are accessible from within the passenger space and could contain weapons. A passenger's belongings, in the passenger area, may also be lawfully searched if those belongings could contain weapons. **Wyoming v. Houghton**, 119 S.Ct. 1297 (1999). **(STATE SPO 40 and 41)**

- If an occupant may be **Terry** frisked for weapons, and any container in the PASSENGER AREA that could hold WEAPONS may be searched.
- If you have a legal reason to pat-down any occupant for weapons, you may also do this limited search of the vehicle they exited, for weapons.
- The limit on the search of containers in the passenger area is that they must be large enough to hold a weapon.
- No automatic authority to search trunk space. It must be reasonable to suspect that the area could be accessed from the passenger area.
- The reasonableness of the search is based on the fact that those suspected to be dangerous might be getting back in the car, where they could access these areas where weapons could be.
- Recognize circumstances when search of motor vehicle without warrant is authorized. (SPO 40 (SS401))
- Identify procedures for searching motor vehicle without warrant. (SPO 41 (SS400))

E. Plain View: during a lawful stop, anything in plain view may be lawfully seized. As long as reason for the stop was lawful, the plain view rule applies. (These items may give officer probable cause to search the entire vehicle under the Aautomobile exception@ discussed below.)

F. Consent: with consent, police may search the entire vehicle, including any containers and the trunk. **Florida v. Jimeno**, 11 S.Ct. 1801 (1991). Police do not have to tell the consenter that he or she is free to leave before asking for permission to search. Consent is valid if voluntarily given. **Ohio v. Robinette**, 117 S.Ct 417 (1996).

- A reminder that these may apply.

II. Search Incident to a Lawful Custodial Arrest

Arizona v. Gant, 129 S.Ct. 1710 (2009). Pursuant to a lawful custodial arrest of an occupant of a vehicle, officers may not automatically search any part of the vehicle. Previous case law was interpreted to allow an automatic search. Now officers must articulate one of two justifications:
(1) the arrestee is within reaching distance of the vehicle, or,
(2) it is reasonable to believe the vehicle contains evidence of the offense of the arrest.

IF the search of the passenger area can be justified, any personal belongings in the passenger area may be searched. This is if those belongings could contain the object of the search. **Wyoming v. Houghton**, 117 S.Ct. 1297 (1999).

- If making a CUSTODIAL arrest of an occupant of a vehicle, officers MAY NOT automatically search the vehicle.
- Officers must articulate one of the specific justifications.
- Recognize circumstances when search of motor vehicle without warrant is authorized. (SPO 40 (SS401))
- Identify procedures for searching motor vehicle without warrant. (SPO 41 (SS400))

III. Automobile Exceptions

1. The Carroll Rule: Carroll v. U.S.

In general, the Supreme Court has made it easier for the police to conduct warrantless searches of vehicles. This is because vehicles are different than dwellings in that they are mobile, may be moved quickly, and are operated out in public. In **Carroll v. U.S., 267 U.S. 132 (1925),** the Court held that exigent circumstances will often cause the search warrant requirement to be suspended. Where the search is necessary to preserve evidence and the car can be driven out of the jurisdiction quickly, the police may search the vehicle without a warrant. This will be true where there is **probable cause to search the vehicle.** The court reiterated this holding more recently in **Maryland v. Dyson**, 119 S.Ct. 2013 (1999).

there is probable cause to search the vehicle.

- This is what will apply if, during the searches under **Long** or **Gant**, contraband or weapons are found on an occupant and/or in the passenger area of the vehicle. If contraband or weapons are discovered on an occupant or in the passenger area FIRST, then probable cause exists to search the entire vehicle for more of the same.
- Search should only in areas for which probable cause exists. The container must be large enough to hold the object of the search.
- The Illinois Supreme Court has held that the odor of burning cannabis justifies a warrantless search of a vehicle. The odor of burning cannabis coming from within vehicle would be probable cause to search the vehicle and any containers that could hold cannabis. **People v. Stout**, 477 N.E.2d 498 (1985).
- Recognize circumstances when search of motor vehicle without warrant is authorized. (SPO 40 (SS401))
- Identify procedures for searching motor vehicle without warrant. (SPO 41 (SS400))

2. Closed Containers in Vehicle Where Probable Cause to Search Vehicle: U.S. v. Ross

. In **U.S. v. Ross, 456 U.S. 798 (1982),** the court extended the rules for the **Carroll**-type automobile searches. Closed containers found in the automobile may be searched without a warrant when there is probable cause to search the vehicle itself and there is probable cause to believe that the container contains the object of the search. The Supreme Court has also held that this type of search lawfully includes the search of the personal belongings of passengers as well as the driver. **Wyoming v. Houghton**, 117 U.S. 1297 (1999).

3. Probable Cause for Container Only: California v. Acevedo

In **Ross**, there was probable cause to believe the car contained contraband. What happens if there is only probable cause for a particular container? In **California v. Acevedo, 500 U.S. 565 (1991)** the court held that, if police officers have probable cause to believe that a container contains contraband, the police may wait until the container is in the car, stop the car, and seize and open the container, without obtaining a search warrant. The court recognized that **Acevedo** could give police an incentive

to postpone getting a warrant. Waiting until a suspect gets into a vehicle, with a container believed to contain contraband, avoids the warrant requirement normally necessary for the search and seizure of that container.

- Once probable cause for the vehicle exists, it is lawful to perform a search of the ENTIRE vehicle. Any containers that could hold the OBJECT OF THE SEARCH may be opened.
- Recognize circumstances when search of motor vehicle without warrant is authorized. (SPO 40 (SS401))
- Identify procedures for searching motor vehicle without warrant. (SPO 41 (SS400))

4. Search for Vehicle Identification Numbers: <u>New York v. Class</u>

All vehicles are required by federal law to have vehicle identification numbers on the dashboard so that they may be observed by someone outside of the vehicle. When an officer makes a traffic stop and the driver exits the vehicle, the officer may reach into the car to move any articles that are obstructing the view of the VIN. If, in doing so, the officer discovers contraband, it may lawfully be seized. Under this rule the items are treated as if they were in "plain view." **<u>New York v. Class</u>**, 475 U.S. 106 (1986). **(SPO CPD SS 6)**

- When an officer makes a lawful traffic stop, if necessary the officer reach into the interior of the vehicle and remove any items which are obscuring the vehicle identification number. If in doing so the officer discovers contraband, can these items be seized and used as evidence.
- Recognize that there is no expectation of privacy regarding motor vehicle's VIN number.

(STATE OUTLINE XV.)

5. Impoundment and Inventory Searches: Impoundment and Inventory Search where No Probable Cause. There are many cases in which a vehicle may be impounded pursuant to an arrest. Even if there is no probable cause for the vehicle itself, police may do a post-impoundment search. This is lawful as long as the search is done pursuant to standard police procedure. **Florida v. Wells,** 110 S.Ct 1632 (1990). **(STATE SPO 30 and 31)**

IV. Some laws providing for Impoundment of Vehicles

625 ILCS 5/6-101. Drivers must have licenses or permits.

(a) No person, except those expressly exempted by Section 6-102 [625 ILCS 5/6-102], shall drive any motor vehicle upon a highway in this State unless such person has a valid license or permit, or a restricted driving permit, issued under the provisions of this Act…

(d) In addition to other penalties imposed under this Section, any person in violation of this section who **is also in violation of Section 7-601** of this Code [625 ILCS 5/7-601] relating to mandatory insurance requirements shall have his or her motor vehicle immediately impounded by the arresting law enforcement officer…

625 ILCS 5/4-103. Lists vehicle theft offenses which allow impoundment.

720 ILCS 5/36-1. Seizure. Any vessel , vehicle or aircraft used with the knowledge and consent of the owner in the commission of, or in the attempt to commit as defined in Section 8-4 of this Code, an offense prohibited by ... [see statute for list of offenses] ...

May be seized and delivered forthwith to the sheriff of the county of seizure...

Act 550. Cannabis Control Act

720 ILCS 550/12. Forfeiture of property.

(a) The following are subject to forfeiture:

(1) all substances containing cannabis which have been produced, manufactured, delivered, or possessed in violation of this Act;

(2) all raw materials, products and equipment of any kind which are produced, delivered, or possessed in connection with any substance containing cannabis in violation of this Act;

(3) all conveyances, including aircraft, vehicles or vessels, which are used or intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of property described in paragraph (1) or (2) that constitutes a felony violation of the Act...

Act 570. Controlled Substances Act.
720 ILCS 570/505. Forfeiture.
The following are subject to forfeiture:
(1) all substances which have been manufactured, distributed, dispensed, or possessed in violation of this Act;
(2) all raw materials, products and equipment of any kind which are used, or intended for use in manufacturing, distributing, dispensing, administering or possessing any substance in violation of this Act;
(3) all conveyances, including aircraft, vehicles or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of property described in paragraphs (1) and (2)...

Municipal Code

9-80-240. Driving with a suspended or revoked license – impoundment.
(a) The owner of record of any motor vehicle that is operated by a person with a suspended or revoked driver's license shall be liable to the city for an administrative penalty of $500.00 plus any applicable towing and storage fees. Any such vehicle shall be subject to seizure and impoundment pursuant to this section…

9-80-220 False, stolen or altered temporary registration permits.

No person shall operate or park on the public way any vehicle bearing a false, stolen or altered state temporary registration permit. A vehicle operated or parked in violation of this section is subject to immediate impoundment…

Some Municipal Code Violations Requiring Vehicle Impoundment:

7-24-225	Unlawful drugs in motor vehicle.
7-24-226	Driving while intoxicated – Impoundment
7-28-390	Dumping on public way – Violation – Penalty
7-28-440	Dumping on real estate without permit
7-38-115	Operational requirement
8-4-130	Possession of etching materials, paint or marker with intent to deface unlawful
8-8-060(d)	Street solicitation for prostitution.
8-20-070	Unlawful Firearm, laser sight accessory, firearm silencer or muffler in motor vehicle.
9-80-240	Driving with a Suspended or Revoked License
9-12-090	Vehicle impoundment [drag racing]
9-76-145	Broadcast or recorded sound restrictions
9-80-220	False, stolen or altered temporary registration permits.
9-92-035	Authority to impound fleeing vehicle.
9-112-555	Impoundment of vehicle – Notification of owner – Penalty
3-46-076	Impoundment of ground transportation vehicles.
3-56-155	Counterfeit wheel tax license emblems – Impoundment
4-68-195	Impoundment of vehicle – Notification of owner – Penalty.
11-4-1410	Disposal in waters prohibited
11-4-1500	Treatment and disposal of solid or liquid waste
15-20-270	Unlawful fireworks in motor vehicle – Impoundment

Instructor Note:

- **I**mpoundment/inventory searches are lawful even where probable cause does not exist for the vehicle. **As long as done pursuant to "standard police procedure."** Items are admissible as evidence if discovered during a lawful inventory of the contents of vehicle. Containers may be opened during an inventory search and the trunk may be searched in these cases as long as part of the **"standard police procedure."**
- Recognize circumstances when impoundment/inventory of property is authorized. (SPO 30 (SS301))
- Identify procedures for impoundment/inventory of property. (SPO 31 (SS300))

Evaluation Questions

1. Does a traffic stop alone allow a warrantless search of a vehicle?

2. Does the issuance of a traffic citation allow for the warrantless search of a vehicle?

3. Pursuant to a lawful vehicle stop and the lawful frisk of an occupant of that vehicle, may any warrantless search of the vehicle be performed? May containers be opened? (Describe the rule.)

4. Pursuant to a lawful custodial arrest, what type of search of the vehicle may be performed automatically (just based on the arrest and nothing more)?

5. If probable cause exists for the vehicle itself (reasonable grounds to believe that a particular item will be found within the vehicle), is it lawful to perform a warrantless search of the vehicle? May containers be opened? (Describe the rule).

6. When an officer makes a lawful traffic stop, if necessary may the officer reach into the interior of the vehicle and remove any items which are obscuring the vehicle identification number? If in doing so the officer discovers contraband, can these items be seized and used as evidence?

7. Are impoundment (/tow) inventory searches lawful even without probable cause as to finding something unlawful within the vehicle? Are items admissible as evidence if discovered during a lawful inventory of the contents of vehicle? May containers be opened during an inventory search? May the trunk be searched in these cases? (Describe the rule.)

"You Be the Judge"

Vehicle Searches

1. Two officers lawfully stopped the defendant's vehicle. They had observed the defendant commit a traffic violation. It was determined that the defendant was operating the vehicle on a suspended license, so he was placed under arrest by the officers. They handcuffed him, searched him, placed him in the squad car, and intended to take him to the station. The search of the defendant's person did not lead to the recovery of any contraband or other evidence.

   One officer remained with the defendant, and the other officer searched the entire passenger compartment of the vehicle. The officers believed that the search of the passenger area of the vehicle was lawful based on the arrest. In the back seat, the searching officer found a jacket, and in the pocket of the jacket the officer found a vial of crack. After searching, the vehicle was left safely parked on the residential street where the stop occurred.

   At his trial for possession of crack, the defendant now moves to suppress the vial of crack, arguing that it was the result of an unlawful search. Should this motion be granted?

   Questions to Answer to Decide:

   Was this a valid search incident to arrest?

   What if rocks of crack were discovered on the arrestee's person during the search incident to arrest; would the search of the vehicle have then been lawful?

   Based on the facts of this scenario, how could the Chicago Police officers (using an ordinance) have correctly justified a search of the vehicle and its contents?

Cops gain traffic-stop power over passengers
By Laurie Asseo
Associated Press Writer

WASHINGTON -- Police can order passengers, as well as drivers, to get out of vehicles during traffic stops, the Supreme Court said Wednesday.

Ruling 7-2 in a Maryland case in which Attorney General Janet Reno argued as a friend of the court, the justices said the need to protect police officers' safety justifies the "minimal" intrusion on a passenger's rights.

"Regrettably, traffic stops may be dangerous encounters," Chief Justice William H. Rehnquist wrote for the court. He noted that 11 police officers were killed and thousands more were assaulted during traffic stops in 1991.

"Danger to an officer from a traffic stop is likely to be greater when there are passengers in addition to the driver in the stopped car," the Chief Justice said.

Wednesday's ruling reversed a Maryland appeals court decision that said crack cocaine found during a 1991 traffic stop could not be used as evidence because the officer did not have the right to order a passenger out of a car.

A Maryland state trooper had stopped the car in Baltimore County after clocking it for speeding and noticing it did not have a license tag. While speaking to the driver, the trooper noticed that a passenger seemed very nervous. The trooper ordered the passenger, Jerry Lee Wilson, to get out of the car. When Wilson stepped out of the car, crack cocaine fell to the ground and he was arrested.

Wilson sought to have the cocaine suppressed as evidence, contending that the officer violated his Fourth Amendment right to be free from unreasonable searches and seizures when he ordered him out of the car.

The justices said officers can order all passengers out of cars stopped for routine traffic violations. But the court did not say whether officers can require passengers to remain at the scene.

Rehnquist noted that when police stop a vehicle, a driver is suspected of committing a traffic offense but there is no such reason to stop a passenger. But he added that as a practical matter, a passenger already has been stopped and that in being ordered out of the car, "the additional intrusion on the passenger is minimal."

Wednesday's ruling extended a 1977 Supreme Court decision that said motorists stopped for routine traffic violations can be ordered by police to get out of their cars. That decision was aimed at protected police officers' safety.

Rehnquist wrote Wednesday, "The same weighty interest in officer safety is present regardless of whether the occupant of the stopped car is a driver or a passenger.'

His opinion was joined by Justices Sandra Day O'Connor, Antonin Scalia, David H. Souter, Clarence Thomas, Ruth Bader Ginsberg and Stephen G. Breyer...John Paul Stevens and Anthony M. Kennedy

dissented...***Maryland v. Wilson***, No. 95-1268 (1997).

Passengers in police control in traffic stop: split high court

by PATRICIA MANSON
Law Bulletin Staff Writer

In a ruling the dissenters claimed "trashes the protections of the Fourth Amendment," a divided **Illinois Supreme Court on Thursday held that police may detain passengers at the scene of a traffic stop.**

In a 4-3 decision the state high court ruled that police do not violate federal constitutional protections against unreasonable searches and seizures when they order occupants to remain at a vehicle stopped for a traffic violation.

"This rule is dictated by the public's strong interest in officer safety during potentially dangerous traffic stops when balanced against the minimal intrusion on the privacy interests of the driver and passengers," Justice Mary Ann G. McMorrow wrote for the majority.

But in a sharply worded dissent, Justice James D. Heiple contended that "the majority trivializes the liberty interest at stake in this case."

"This ruling not only invites routine and arbitrary searches and seizures of honest law-abiding citizens, it also eviscerates the protections against unreasonable searches and seizures in both the Illinois and federal constitutions," Heiple wrote.

Heiple was joined in the dissent by Justices Moses W. Harrison II and John L. Nickles. ***People v. John Gonzalez***, No. 84919 (1998).

The ruling and dissent were issued in an appeal brought by John Gonzalez, who was searched after the car in which he was a passenger was stopped for speeding and he tried to walk away from the vehicle. The Rockford police officer conducting the search found a gun in Gonzalez' waistband.

Gonzalez, who had prior convictions for robbery and aggravated discharge of a firearm, was found guilty of a charge of unlawful use of a weapon by a felon. He was sentence to nine years in prison.

In a 2-1 decision in January, a panel of 2d District Appellate Court upheld Gonzalez' conviction and

affirmed his sentence after concluding that Apublic interest in officer safety outweighs the potential intrusion to the passenger's liberty interests." ***People v. John Gonzalez***, No. 2-95-0708.

On Thursday, Assistant Attorney General Stephen F. Potts said he was pleased that the high court upheld the Appellate Court.
"I think the Supreme Court's decision indicates that they were concerned with the officer's safety in the context of a traffic stop," he said.

But Gonzalez' attorney, Beth I. Katz, predicted that the decision as it stands would have far-reaching -- and adverse -- effects "on everyone who rides in a car."

"I find it a concern that a person would have to ask the police officer to leave even though they are suspected of nothing and are not the subject of the traffic stop," Katz said. "I think it is an infringement of the Fourth Amendment."

Katz represented Gonzalez under a contract with the state appellate defender's office out of Elgin.

In its opinion, the majority noted that the U.S. Supreme Court ruled more than 20 years ago that police officers do no violate the Fourth Amendment by ordering a driver out of his vehicle following a traffic stop. ***Pennsylvania v. Mimms***, 434 U.S. 106, 54 L.Ed.2d 331,
98 S.Ct. 330 (1977).

The U.S. high court in that decision concluded that the public interest in police safety outweighed the minimal intrusion into the driver's personal liberty, the majority said.

The majority said the U.S. Supreme Court used the same balancing test last year when it expanded the "bright-line rule" of ***Mimms*** to allow police conducting a valid traffic stop to order passengers out of the vehicle even if the officer does not suspect that the passengers have committed a crime. ***Maryland v. Wilson***, 519 U.S. 408, 137 L.Ed.2d 41, 117 S.Ct. 882 (1997).

"It is clear under the rationale of ***Mimms*** and ***Wilson*** that the movements of occupants of a vehicle which is legitimately stopped may be subject to control by the police officer conducting the stop, even though the officer has no suspicion that the individuals have been involved in criminal behavior," the majority in ***Gonzalez*** said.

But the dissenters said Wilson did not control the result of Gonzalez' case because Wilson had not addressed whether police may require passengers to remain at the scene of a traffic stop after they exit the vehicle.

That question "is a hot issue in Fourth Amendment law," according to a criminal law expert. Timothy P. O'Neill, who teaches courses in criminal law at the John Marshall Law School, said the U.S. high court

may eventually take up the issue.

“It certainly seems that there’s a chance of its being decided by the Supreme Court because this is a question explicitly left open by ***Maryland v. Wilson***,” O’Neill said.

Car-search law violates Constitution: justices

By Laurie Asseo - Associated Press Writer

WASHINGTON -- Police cannot be given blanket authority to search people and their cars without consent after ticketing them for routine traffic violations, the Supreme Court ruled Tuesday.

The court ruled unanimously that a search of an Iowa man's car after he was stopped for speeding violated the Constitutions ban on unreasonable searches. The challenged search had turned up marijuana and a pipe in Patrick Knowles' car.

The highest court ruled in 1973 that police can search people after arresting them, citing a need to disarm suspects and preserve evidence.

But Chief Justice William Rehnquist wrote for the court today that those needs are not as great when someone is simply being given a traffic citation.

Concern for officer safety may justify ordering a driver and passengers out of the car, but "it does not by itself justify the often considerably greater intrusion attending a full field-type search," Rehnquist said.

"Officers have other, independent bases to search for weapons and protect themselves from danger,' he said. Those include the authority to perform a pat-down search of motorists if the officer has reason to suspect they may be armed.

Rehnquist also discounted prosecutors' argument that officers needed to search Knowles' car to preserve evidence.

"No further evidence of excessive speed was going to be found either on the person of the offender or in the passenger compartment of the car," the chief justice said.

Knowles was pulled over for speeding on March 6, 1996, in Newton, Iowa. An officer gave him a speeding ticket and then searched Knowles and his car's passenger compartment. He was charged with possessing marijuana. A trial judge allowed the drug to be used as evidence, and Knowles was convicted and sentenced to 90 days in jail.

An Iowa law allows police to either make an arrest or issue a citation for any traffic violation. If they issue a citation, they can make an "otherwise lawful search."

The Iowa Supreme Court has interpreted that provision to let police conduct a search whenever they could have arrested someone, even if they decide to issue a citation instead.

Knowles' lawyer, Paul Rosenberg, said an Arkansas court recently authorized police in that sate to conduct such searches.

Supreme Court ruling for Iowa also might have encouraged other state to enact similar laws.

The Iowa Supreme court has interpreted that provision to let police conduct a search whenever they could have arrested someone, even if they decide to issue a citation instead.

However, a ruling for Iowa might have encouraged other states to enact similar laws.

Rehnquist wrote that even though the search was authorized by Iowa state law, it violated the Constitution's Fourth Amendment, which bans unreasonable searches and seizures. He said the justices were being asked to extend the search-upon-arrest rule "to a situation where the concern for officer safety is not present to the same extent and the concern for destruction or loss of evidence is not present at all. We decline to do so."

The case is ***Knowles v. Iowa***, No 97-7597 (December 1998).

Police can search car passenger's property: court

By Richard Carelli
Associated Press writer

WASHINGTON -- Police can search the personal belongings of all passengers inside a car when lawfully seeking criminal evidence against the driver, the Supreme Court ruled Monday.

By a 6-3 vote in a Wyoming case, the court expanded the already considerable police power to search motor vehicles without a court warrant.

"Effective law enforcement would be appreciably impaired without the ability to search a passenger"s personal belongings when there is reason to believe contraband or evidence of criminal wrongdoing is hidden in the car," Justice Antonin Scalia wrote for the court.

In dissent, Justice John Paul Stevens said, "Today, instead of adhering to the settled distinction between drivers and passengers, the court fashions a new rule."

Under that rule, Stevens said, police might be able to search a taxi passenger's briefcase if they had reason to believe the driver had a syringe somewhere in his vehicle...

The peculiar Wyoming case that spurred Monday's decision on car searches began as a routine traffic stop, a situation that arises countless times daily across the country.

A car driven by David Young was stopped for speeding on Interstate 25 in Natrona County in the early morning hours of July 23, 1995. After a Highway Patrol officer saw a hypodermic syringe in young's pocket, Young candidly said he had used it to take drugs.

During the ensuing search, two other officers asked the car's two female passengers to get out of the car. One of them, Sandra Houghton, left her purse on the car's back seat. Inside it, police found drug paraphernalia and liquid methamphetamine.

She was convicted on a felony charge but appealed.

The Wyoming Supreme Court threw out her conviction last year, ruling that police were justified only in searching the car for drugs Young may have had with him -- and therefore could not search Houghton's purse.

Monday's decision reversed the state court's ruling.

"The sensible rule...is that such a package may be searched, whether or not its owner is present, as a passenger or otherwise, because it may contain the contraband that the officer has reason to believe is in the car," Scalia said.

He added that car passengers "will often be engaged in a common enterprise with the driver, and have the same interest in concealing the fruits or the evidence of the wrongdoing."

Joining Scalia in reinstating Houghton's conviction were Chief Justice William H. Rehnquist and Justices Sandra Day O'Connor, Anthony M. Kennedy, Clarence Thomas and Stephen G. Breyer.

Joining Stevens is dissent were Justices David H. Souter and Ruth Bader Ginsburg.

The case is ***Wyoming v. Houghton***, No. 98-184 (1999).

Arrest, Search and Seizure Review

The following is a review of <u>some</u> of the issues covered in the 15 hours of law instruction entitled "Arrest, Search and Seizure." This list highlights levels of non-consensual encounters between police and citizens, and notes the legal standards of evidence which must be met in order for the officer to justify the search and/or seizure. As officers, you need to remember that, if you are detaining a citizen against their will, or searching where the citizen has a legitimate expectation of privacy, you need to articulate why you did what you did. The highlighted phrases indicate the legal standard which needs to be met, if any. This is what should be in your reports! If it is not there, any resulting seizure of evidence will not be admissible at trial. As the officer, you are the one who knows why you felt you were justified in acting as you did. Remember to put down as many facts as possible to explain this.

1. **Reasonable Suspicion: The Stop**

   If an officer has **"reasonable suspicion"** of an individual (on foot or in a vehicle), meaning facts which lead the officer reasonably to conclude that criminal activity is afoot, the officer may **stop** and detain the person for a reasonable amount of time. **Facts are needed to show why you were suspicious of criminal activity** (for example casing of a store, the passing of a small package in exchange for money in area of high drug activity)**.** Stopping and detaining a citizen against their will without a reason is unlawful, regardless of whether or not the stop leads to recovery of contraband. During the stop, the officer should be asking questions which will confirm or dispel the suspicion of criminal activity (build probable cause to arrest or let the person go).

2. **Armed and Dangerous: The Frisk**

   If during the lawful stop, the officer also has a reason to believe that the suspect is **armed and dangerous**, then the officer may do a **frisk**: a limited pat-down of the outer clothing **for weapons. The frisk is not a full search of the person.**

   The officer need not be certain the person is armed, but the officer must have facts which support that the officer **reasonably suspects that he or she or another is in danger of attack.**

   If during this frisk, the officer feels any **hard objects** that could be weapons, the officer may go into the clothing to retrieve the items, seizing them if contraband (weapon or not).

   If during this frisk, the officer **plainly feels other contraband**, meaning it is immediately apparent to the touch that the items are unlawfully possessed, the officer may also go into the clothing to retrieve these items.

If the suspect is carrying any **packages**, these may be **"frisked"** for weapons as well.

If the suspect is stopped in a **vehicle**, the suspects may be **ordered out** of the vehicle and their person **frisked** if there is a reason to believe the person is **armed and dangerous**. The **passenger compartment** may also be "frisked" for weapons using the same reason. Containers may be opened only if they could **reasonably contain weapons**. The **trunk or other containers** may not be opened without **probable cause** for the specific area.

***Remember that the justification of the frisk is always safety and the search is for weapons, even though the law justifies the eventual seizure of more than just weapons if done properly.**

3. Probable Cause: The Arrest and Search Incident to Lawful Arrest

If an officer has **"probable cause,"** reasonable grounds to believe that a particular person has committed or attempted to commit an offense (or there is an arrest warrant), the officer may, using reasonable and necessary force, place the suspect under **arrest**. A citizen has no right to resist an arrest he or she knows is being made by a police officer or someone summoned and directed by a peace officer, regardless of whether or not the citizen believes the arrest is justified.

An officer must have probable cause to take a citizen against his or her will into the police station, regardless of whether the officer calls this an "arrest." The test for whether or not a person is under arrest is **whether a reasonable person in the suspect's situation would believe that they would not be free to leave after the encounter with the officer.** Just putting a citizen in handcuffs is not an arrest, but be aware of facts which tend to make the encounter look more custodial. Where you are putting a citizen in handcuffs without probable cause, for your safety for example, it is advisable to communicate this reason to the citizen and the fact that they are not under arrest. If under the totality of the circumstances a reasonable person would believe they were under arrest/in custody/going to be taken into the station to be charged, then at that point probable cause is required.

If the officer has probable cause to **arrest**, the officer may conduct a **full search of the arrestee's person, and the area within the arrestee's control.** This is called a **"search incident to a lawful custodial arrest**." This search is justified because of the arrest. Unlike the stop and frisk situation, the officer need not articulate any additional reasons for doing the search. (But note: a "strip search" requires permission and a "body cavity search" requires a warrant. See Chapter 725 Article 103 in the Illinois Compiled Statutes.)

If the officer has probable cause to **arrest** a person in a **vehicle**, **the arrest no longer automatically justifies a search of the passenger compartment of the vehicle and any containers.** Officers must be able to articulate: (1) the arrestee is within reaching distance of the vehicle, or, (2) it is reasonable to believe the vehicle contains evidence of the offense of the arrest. **Arizona v. Gant**, 129 S.Ct. 1710 (2009).

Not affected **Gant**: Officers should remember that if the vehicle is going to be impounded (or "towed") then an inventory search may be performed lawfully. **Also, if at any point during a traffic stop an officer justifies a frisk of an occupant, a search of the passenger area for weapons may be done immediately. Nothing in the new case law changes this authority.**